

ERASTUS WILLIAMS, ADMINISTRATOR OF ELISHA  
TRACEY.

FEBRUARY 11, 1860.—Reported from the Court of Claims; committed to a Committee of the Whole House, and ordered to be printed.

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The COURT OF CLAIMS submitted the following

REPORT.

*To the honorable the Senate and House of Representatives of the United States in Congress assembled :*

The Court of Claims respectfully presents the following documents as the report in the case of

ERASTUS WILLIAMS, ADMINISTRATOR OF ELISHA  
TRACEY, *vs.* THE UNITED STATES.

1. The petition of the claimant.
2. Original documentary evidence in the case, transmitted to the House of Representatives.
3. Claimant's brief.
4. United States Solicitor's brief.
5. Opinion of the court adverse.

By order of the Court of Claims.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at Washington, this fifth day of December,  
[L. S.] A. D. 1859.

SAM'L H. HUNTINGTON,  
*Chief Clerk Court of Claims.*

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IN THE COURT OF CLAIMS.

ERASTUS WILLIAMS, Adm'r of Elisha Tracey, *vs.* THE UNITED STATES.

*To the honorable the Judges of the Court of Claims:*

The petition of Erastus Williams, of Norwich, in the State of Connecticut, adm'r of the estate of Elisha Tracey, late of said Norwich, deceased, respectfully represents : That, prior to the last war with Great

Britain, the said Tracey was appointed, under the direction of the President of the United States, an agent for fortifications and soon afterwards was directed to perform the duties of the quartermaster's department, within the district in which he resided. That in the month June, 1811, he was directed by the Secretary of War to erect a public arsenal for manufacturing travelling and gun carriages, and other implements of war, when he employed a large number of artificers during the whole period that the war continued, as an agent of the Ordnance department. That in the year 1812, soon after the declaration of war, he was appointed a purchasing commissary. That during the whole period of the war he continued perform, in military district number two, the duties of the said four offices, there being no other person in said district appointed or acting in the discharge of said duties. That for all said services compensation was, at that time, claimed by said Tracey; but with the exception of a small allowance of \$1,637 97, made to him at one time by the Secretary of War, the only compensation allowed him was that of a purchasing commissary, an office with a very limited commission. That during the same period of time there were four distinct officers in other districts of the United States in the discharge of these separate duties, and receiving compensation therefor. That during the same period of time, in addition to the foregoing, he performed the duties of an issuing commissary. That the duties imposed upon him in the discharge of these offices were arduous and responsible, and more than half a million of dollars were disbursed by him on account of the government during said period; all of which services were most faithfully performed, and to the satisfaction of the government. And your petitioner claims that the said Tracey was entitled to receive the compensation appropriate to the several offices, and for which no adequate compensation has been made.

Your petitioner further states, that, not being furnished with funds by the United States, between the 1st day of January and the 27th June, 1813, he advanced his own funds for the use of the United States, by borrowing money from the banks at Norwich and New London, on which he paid interest amounting to the sum of \$348 25.

Also, that the said Tracey having received a draft from the Treasury for the sum of \$20,000, and the same having been protested, he paid interest on the same from the 30th September to the 31st December, 1814, amounting to the sum of \$300.

Your petitioner also represents, that the treasury notes and other funds received by said Tracey from the United States were at the time so far depreciated in market that, in order to convert the same into specie, there was an actual loss of \$3,080, being for the difference of exchange for specie paid in Boston and Providence, and received in New York funds. That it also appears from the official statements of the Treasury Department that said Tracey was, at the different periods shown by the said accounts, in advance for a large amount to the United States, as will appear by said official statements and the accounts of said Tracey at the treasury. That the interest on said balances, as shown by said statements while the same continued, amounted to the sum of \$1,604 37.

Your petitioner therefore prays your honors to inquire into the said several matters of claim, and to grant him adequate relief in the premises. The said claim belongs alone to the legal representatives of said Elisha Tracey.

In the Senate this claim was presented by said Tracey to the 2d session of the 14th Congress, and referred to the Committee on Claims, who were discharged, and leave granted to withdraw.

In the 1st session of the 20th Congress the Committee on Claims reported a bill for his relief, which was rejected, reconsidered, and indefinitely postponed.

In the 1st session 21st Congress a bill was passed by the Senate for his relief, having been reported by the Committee on Claims; and in the 1st session 29th Congress leave was granted to withdraw the petition.

In the House of Representatives in the 1st session 21st Congress the Senate bill was adversely reported by the Committee on Claims, and leave to withdraw granted.

In the 1st session of the 29th Congress, and the 1st session of the 30th Congress, the petition of the representatives of said Tracey was presented and referred to the Committee on Claims, but no report or other action had upon the same.

ERASTUS WILLIAMS,  
*Administrator.*

STATE OF CONNECTICUT, *County of New London, ss:*

On this 22d day of February, A. D. 1858, personally appeared Erastus Williams, the petitioner and claimant in the foregoing petition, and then and there made solemn oath that the facts stated in the said petition are true, to the best of his knowledge and belief.

Before me,

JNO. T. WAITE.

*A Commissioner of the Court of Claims.*

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ERASTUS WILLIAMS, administrator of ELISHA TRACEY, *vs.* THE UNITED STATES.

*List of papers to be printed on behalf of petitioner.*

1. Secretary of the Treasury to Committee on Claims, March 26, 1830.
2. Elisha Tracey's claim for loss on funds and for interest paid at banks.
3. Mr. Dallas's letter on the subject of interest on \$20,000.
4. H. Perkins, cashier's, certificate.
5. A. Fletcher, cashier's, certificate.
6. Hon. Wm. H. Crawford's letter to E. Tracey, March, 1823.
7. Hon. Peter B. Porter's letter.
8. Wm. Lee, 2d Auditor's, statement.
9. D. Gelston, collector, New York.
10. Chashier, Manhattan Company.

11. Col. Kingbury's certificate, October 30, 1828.
12. District Order, September 8, 1814.
13. Certificate, T. F. Tucker, Treasurer of the United States.
14. A. J. Dallas, July 8, 1815.
15. Mr. Dallas, December 22, 1814.
16. Elisha Leffingwell's, deposition.
17. Daniel Sheldon, jr., letter, September 18, 1815.
18. Russell H. Nevins's deposition.
19. Hon. Jonathan Roberts, May, 1823.
20. Richard Whiley's certificate.
21. Jno. H. Eaton, Secretary of War, to E. Whittlesey, March, 1830.
22. Statement from Treasury Department, 3d quarter, 1814.
23. Statement from Treasury Department, 4th quarter, 1814.
24. Statement from Treasury Department, 1st quarter, 1815.
25. Statement from Treasury Department, 2d quarter, 1815.
26. Mr. Ruggles's report.

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*Papers from the Treasury Department.*

No. 1.

*Letter from the Chairman of the Committee of Claims to the Secretary of the Treasury, dated March 22, 1830.*

WASHINGTON, March 22, 1830.

SIR: I am directed by the Committee of Claims, to which was referred a bill from the Senate for the relief of Elisha Tracey, to ask information on the following points, viz:

1st. What amount of compensation has been paid to said Tracey for his services, and for emoluments in the Quartermaster's department during the late war.

2d. What amount has been paid to him for clerk hire in the Quartermaster's department, and who were employed as clerks, and the amount paid to each?

3d. Similar and distinct inquiries are made as to his compensation and emoluments in the Ordnance department as agent for fortifications, and as a purchasing or issuing commissary, and for his clerk hire in each, if any.

4th. How much money was expended by him for and on behalf of the United states: 1st, in the Quartermaster department; 2d, in the Ordnance department; 3d, as agent for fortifications; 4th, as issuing commissary?

If he received any per centage on moneys expended, or extra allowances not included in the inquiry of compensation for services or emoluments; the committee wish to be informed of the amount, as Mr. Tracey is anxious to have the decision of the committee at an early day. The committee will thank you for an answer as soon as your convenience will permit.

In addition, the committee wish to be informed whether any



interest has been allowed to Mr. Tracey for advances made or money borrowed, and, if so, the amount, and on what particular sums?

With due respect, I am yours, &c.,

E. WHITTLESEY.

Hon. SAMUEL D. INGHAM,  
*Secretary of the Treasury.*

*Letter from the Third Auditor to the Secretary of the Treasury, dated  
March 26, 1830.*

TREASURY DEPARTMENT,  
*Third Auditor's Office, March 26, 1830.*

SIR: I have the honor to return the letter addressed to you by the chairman of the Committee of Claims of the House of Representatives, dated 22d instant, and by you referred to this office on the 23d, and received by me on the 24th, with a statement embracing answers to the inquiries made by the committee.

In reference to that relative to interest, I have thought it proper to furnish a copy of my letter on this subject to the chairman of the Committee on Claims in the Senate, dated January 21, 1828, from which it will appear that no allowance on that amount has been made through this office.

With great respect, your obedient servant,

PETER HAGNER, *Auditor.*

Hon. SAMUEL D. INGHAM,  
*Secretary of the Treasury.*

*Copy of letter of the Third Auditor to the chairman of the Committee of  
Claims of the Senate, dated January 21, 1828.*

TREASURY DEPARTMENT,  
*Third Auditor's Office, January 21, 1828.*

SIR: I have the honor to acknowledge the receipt of your letter of the 18th instant, enclosing the petition and papers of Mr. Elisha Tracey, with two accounts for interest and difference of exchange, as follows:

*First account.*

To interest paid at the banks from January 1 to June 27, 1813.....	\$348 25	
To interest on protested bills from September 30 to December 1, 1814, on \$20,000.....	300 00	
		648 25
To difference of exchange for specie paid in Bos- ton and Providence, and received on New York paper, on \$15,400, at 20 per cent.....		3,080 00
		3,728 25

*Second account.*

To interest on \$42,373, balance due as per official statement, from October 1, 1814, to January 1, 1815.....	639 59
To interest on \$14,442, balance due, as per official statement, from January 1 to September 1, 1815 .....	619 89
To interest on \$8,642, due, as per official statement, from April 1 to September 30, 1815.....	259 26
To interest on \$5,977, balance due, per official statement, from July 1 to September 30, 1815.	89 63
	<hr/> 1,604 37
	<hr/>

In compliance with your request that I might furnish such evidence in relation to the settlement as may be in this office, and to reply to each particularly, I have the honor to state that the first of those accounts appears to have been presented to the late accountant of the War Department, and returned by him as not admissible in January, 1816, as will be seen by his remarks on the account. The account, with the documents in support of it, was again presented by Mr. Tracey to the Secretary of War, and by him turned over to this office, with his decision thereon, as will be perceived by the accompanying copy of a letter in which the account and papers were returned to Mr. Tracey in March, 1820. The subject of Mr. Tracey's claim would again appear to have been before the Secretary of War, because I find a letter addressed to him in March, 1823, a copy of which is enclosed for the information of the committee. No report can be found in the records of that office to have been made to Mr. Roberts on Mr. Tracey's claim. His present account for interest on balances reported in favor of Mr. Tracey on the settlement of his accounts for disbursements in the third and fourth quarters of 1814 and the first and second quarters of 1815, does not appear to have been before presented. Had the claim been before presented at this office, it would have been returned to him as entirely inadmissible, there being neither law nor usage to sustain its allowance.

Very respectfully, your obedient servant,  
PETER HAGNER, *Auditor.*

HON. BENJ. RUGGLES,  
*Senator of the United States.*

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*Copy of letter from the Third Auditor to the chairman of the Committee of Claims, dated March 29, 1830.*

TREASURY DEPARTMENT,  
*Third Auditor's Office, March 29, 1830.*

SIR: Agreeably to the request contained in your letter of this date, I have the honor to enclose to you herewith a statement showing the disbursements made by Mr. Elisha Tracey, late deputy commissary, in

each year and under each head of expenditure. It is not believed that in the years 1812 and 1813 there was a quartermaster at New London.

Very respectfully, your obedient servant,

PETER HAGNER, *Auditor.*

Hon. ELISHA WHITTLESEY,

*Chairman Committee of Claims, H. R.*

Statement exhibiting the disbursements made by Elisha Tracey in each year and in the different offices he held, furnished in pursuance of a request from the Committee of Claims of the House of Representatives, dated March 29, 1830, viz:

For the commissary's department:

On account of clothing between July 15, 1812, and June 30, 1815—		
In the year 1813.....	\$210,669	10
In the year 1814 .....	159,392	55
To June 30, 1815.....	4,635	60
		<hr/>
		374,607 25

In the quartermaster's department:

On account of quartermaster's department, July to December 31, 1812.....	1,711	91
In the year 1813.....	21,368	23
In the year 1814.....	28,196	52
To June 30, 1815.....	1,576	40
		<hr/>
		52,847 06

On account of ordnance, July to December 31, 1812 .....	6,069	62
In the year 1813.....	19,546	67
In the year 1814.....	18,276	11
To June 30, 1815.....	4,372	24
		<hr/>
		48,258 64

On account of fortifications, July to De- cember 31, 1812.....	1,815	29
In the year 1813.....	18,017	69
In the year 1814.....	9,351	85
To June 30, 1815.....	661	67
		<hr/>
		30,346 50

On account of hospital department, July to December 31, 1812.....	10	79
In the year 1813.....	137	39
In the year 1814.....	383	47
To June 30, 1815.....	604	01
		<hr/>
		1,135 66

On account of contingencies—		
In the year 1813.....	203	25
In the year 1814.....	527	71
To June 30, 1815.....	170	68
		<hr/>
		901 64

The last two items, for hospital department and contingencies, were not embraced in the former statement furnished, not being in the call of the committee.

Subsequent to the 30th of June, 1815, when Mr. Tracey's duties ceased as deputy commissary general, he made disbursements as an acting deputy quartermaster general from July to December, 1815, as follows:

On account of clothing for beds in 1813 .....	\$87 57
On account of quartermaster's department.....	618 07
On account of ordnance .....	4,524 25
On account of fortifications .....	799 79
On account of hospital department.....	376 43
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	6,406 29
	<hr/>

PETER HAGNER, *Auditor.*

TREASURY DEPARTMENT,

*Third Auditor's Office, March 29, 1830.*

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Statement exhibiting the sums disbursed by Elisha Tracey, late deputy commissary, between the 1st of July, 1812, and the 30th of June, 1815, when his duties as deputy commissary ceased, on account of clothing, fortifications, quartermaster's, and ordnance departments; showing also the amount of compensation he has been allowed for his services as deputy commissary, and the allowances made him as compensation for his services for disbursing on account of fortifications, quartermaster's, and ordnance departments, &c., in the above period and to the 31st of December, 1815; also the amount that has been allowed on account of clerk hire, furnished in pursuance of a letter from the Hon. Elisha Whittlesey to the Secretary of the Treasury, dated March 22, 1830, referred to this office, viz:

Disbursements in the commissary's department on account of clothing, &c.....	\$374,407 25
On account of fortifications .....	30,346 50
On account of quartermaster's department.....	53,847 06
On account of ordnance department.....	48,258 64
	<hr/>
	506,859 45
Amount of compensation allowed for his services as deputy commissary.....	5,724 95
Amount allowed him as compensation for his services in making disbursements on account of fortifications, quartermaster's and ordnance departments, &c., by the Secretary of War, the pay and emoluments of an assistant deputy quartermaster general, from July 1, 1812, to September 30, 1814, at which period the allowance was ordered by the Secretary to cease.....	1,637 97

This sum charged by Mr. Tracey for clerk hire, at \$500 per year for three years; (the persons employed were C. Carew, C. Sterry, and Wm. Huntington,).....	1,500
From which was deducted one year's salary, in consequence of payments made the clerks for services as inspectors of clothing, &c.....	500

Allowed.....	1,000
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Mr. Tracey continued to make disbursements, amounting to about \$6,000, in the quartermaster's and ordnance departments, fortifications, &c., subsequent to his duties as deputy commissary, to wit: between July 1 and December 31, 1815; for this service he was allowed by the Secretary of War, for six months ending December 31, 1815, the pay and emoluments of an assistant deputy quartermaster general, amounting to.....

387 20
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PETER HAGNER, *Auditor.*

TREASURY DEPARTMENT,  
*Third Auditor's Office, March 26, 1830.*

*Copy of letter from Secretary of Treasury to E. Whittlesey.*

TREASURY DEPARTMENT, *March 26, 1830.*

SIR: I have the honor to transmit a report from the Third Auditor which contains the information requested in your letter of the 22d instant relative to the case of Elisha Tracey.

I have the honor to be, very respectfully, your obedient servant,  
S. D. INGHAM,  
*Secretary of the Treasury.*

Hon. E. WHITTLESEY,  
*Ch. Com. Claims, Ho. Rep.*

*E. Tracey's claim.*

UNITED STATES TO ELISHA TRACEY; *Dr.*

To interest paid at the banks from January 1st to June 27th, 1813, (see certificates Nos. 1 and 2,).....	\$348 25
To interest on a protested draft from September 30th to December 31st, 1814, on \$20,000, (see Mr. Dallas's letter, deposition No. 6, and sundry letters,).....	300 00
To difference of exchange for specie paid in Boston and Providence and received in New York paper on \$15,400, at 20 per cent. (see Nos. 3, 4, 5, 6 and 7,).....	3,080 00
	<u>3,728 25</u>



The above is inadmissible without the sanction of the Secretary of War.

TOBIAS LEAR.

DEPARTMENT OF WAR,  
*Accountant's Office, January 24, 1816.*

No. 2616.

\$20,000.

TREASURY OF THE UNITED STATES,

*Washington, September 24, 1814.*

SIR: At sight pay to Elisha Tracey, esq., deputy commissary, or order, twenty thousand dollars, value received.

(Signed by the Treasurer.)

To JEDEDIAH HUNTINGDON, esq.,  
*Collector of New London.*

[Endorsed.]

*December 28, 1814.*

Pay the contents to Mr. William H. Coit on my account.

ELISHA TRACEY, *D'y. Com'y.*

[Endorsed.] Received the within December 30th, 1814.

W. H. COIT.

[Endorsed.] The within draft is a true copy of the original.

TH. T. TUCKER.

Presented for payment, October 11th, 1814, and refused.

JOSEPH WILLIAMS,  
*Notary Public.*

*Secretary of the Treasury to E. Tracey.*

TREASURY DEPARTMENT, *January 16, 1816.*

SIR: The facts that the Treasurer's draft in your favor for 20,000 dollars upon the collector at New London, dated the 24th day of September, 1814, was protested, and that it was not paid until the 31st day of December, 1814, are incontrovertibly true. But, in order to enable me to admit those facts, I have been under the necessity to examine the course of the transaction, as it appears from your letters and the records of this office, and I find that the draft was remitted to you, in your official capacity as a deputy commissary; that you were offered payment in treasury notes but declined it; and that you caused the draft to be protested, but still stated that it was an affair of the government. It is true, that you afterwards urged that you had been obliged to borrow money, upon interest, for the public service, in consequence of the non-payment of the draft; that the government had saved the interest on the treasury notes which you refused to accept; and that you were entitled, in equity, to be reimbursed the interest

which you had actually paid. But the proofs of these allegations have not been produced or required, because, whatever might be the equity resulting, I had no power to act upon them. If you borrowed money upon interest to make purchases as a commissary, the claim for reimbursement should form an item in your official accounts at the War Office.

I am, very respectfully, sir, your obedient servant,

A. J. DALLAS.

ELISHA TRACEY, esq.

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*H. Perkins's certificate.*

NORWICH BANK, *December 13, 1815.*

I hereby certify that Elisha Tracey, esq., deputy commissary, paid interest at the bank on two thousand dollars from the 5th of January, 1813, to the 11th of February following, and on fifteen hundred dollars from January 19, 1813, to the 13th of June following; also on twelve hundred dollars from April 23, 1813, to June 14; and, from the nature of the checks drawn on the bank for the said sum, I have reason to believe they were expended for the service of the United States.

H. PERKINS, *Cashier.*

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*A. Thatcher's certificate.*

NEW LONDON BANK, *December 11, 1815.*

I certify that from the 1st day of January, to the 17th day of June, 1813, Elisha Tracey, esq., deputy commissary, was paying interest for money borrowed of this bank, on the sum of *ten thousand dollars*, which money, from the nature of the checks which were drawn for it to many different persons, was in my opinion undoubtedly for the purpose of paying debts due from the United States to sundry persons who had furnished supplies for the same.

A. THATCHER, *Cashier.*

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*Secretary of the Treasury to E. Tracey.*

TREASURY DEPARTMENT, *March 19, 1823.*

SIR: In reply to your letter of the 22d ultimo, I have the honor to state, that I recollect distinctly that when you were in this place in the winter of 1816, you presented an account for interest, and for the difference between the funds received by you, and specie, when you had been under the necessity of paying specie in Boston and Providence. I have no recollection of having offered any opinion in favor of the claim of interest upon balances from time to time due on account, but I recollect distinctly that I was then of opinion that you were en-

titled to receive from the government the amount of interest you had paid to banks, or upon protested treasury drafts, and for any loss you had sustained in converting the funds placed in your hands by the government, when such conversion was necessary to meet the engagements you contracted on account of the government.

For interest paid by contracts to bank on account of the failure of the government to make the advances stipulated by contract, allowances were made by my direction, when in the War Department, and I should not have hesitated to make the same allowance to an officer of the government, had claims of that kind been presented after the decision was made.

I recollect very distinctly advising you to waive those items in the settlement of your accounts at that time, under a belief that some general provision would be adopted in the course of the session which would prevent the necessity of resorting to any measure by the department which might be considered a departure from the established usage in the settlement of accounts.

I remain, with respect, your most obedient servant,

WM. H. CRAWFORD.

Colonel ELISHA TRACEY.

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*Secretary of War to E. Tracey.*

DEPARTMENT OF WAR, December 19, 1828.

SIR: I have examined with some attention the papers which you have presented to me in support of your claims against the government, for a compensation beyond what you have already received for services rendered and responsibilities incurred by you during the late war with Great Britain. I think that you have still some equitable claims, and, were your call now an original one, it is probable that I should make you some further allowances, without imposing on you the necessity of a resort to Congress.

But, inasmuch as your claims have already been, not only before the departments, but also before Congress, I do not feel at liberty to interfere; but recommend to you to continue your application to Congress, as the only means by which you can expect to obtain relief.

Very respectfully, your obedient servant,

P. B. PORTER.

ELISHA TRACEY, Esq.

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*Certificate of Second Auditor.*

TREASURY DEPARTMENT,  
*Second Auditor's Office, February 12, 1828.*

It appears from the books of the late office of superintendent general of military supplies, deposited in this office, that Elisha Tracey,

then deputy commissary, made returns to that office for issues of clothing, ordnance supplies, &c., &c., from the 1st of April, 1813, to the 30th June 1815.

W. LEE.

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*D. Gelston's certificate.*

COLLECTOR'S OFFICE, NEW YORK,  
January 2, 1815.

I do hereby certify that, on the 6th day of January, 1815, by direction of the Secretary of the Treasury of the United States, I paid to Elisha Tracey, deputy commissary, by my checks on the banks of this city, a draft in his favor for the sum of fourteen thousand five hundred dollars, drawn by Jedediah Huntington, esq., collector of the district of New London.

D. GELSTON, *Collector.*

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*J. Huntington's check.*

December 20, 1814.

Cashier of Manhattan Company, pay to Elisha Tracey, or order, nine hundred dollars.

J. HUNTINGTON.

\$900.

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Paid and charged January 6, 1815.

S. FLEWELLING,  
*Cashier Manhattan Co.*

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*Colonel Kingsbury's certificate.*

FRANKLIN, *Connecticut*, October 30, 1828.

I certify that during the late war I was stationed in military district No. 2, constituted by the States of Connecticut and Rhode Island, as an inspector general, a part of which period I commanded in said district.

Colonel Elisha Tracey, of Norwich, during that whole period, performed the duties of purchasing commissary; he also, during the same period, performed the duties of the quartermaster's department, there being no other public officer in that district; as well as those of agent of fortification, Forts Griswold and Trumbull being rebuilt under his agency and disbursement of money; in addition to which he had an ordnance establishment at Norwich, where a great number of artificers were employed prior to and during the war, manufacturing gun-carriages and carriages for forts. This arduous and multiplied business was performed to the entire satisfaction, as I have reason to believe, of the commanding generals of that district. I can

truly say he was a vigilant and faithful officer, being the factotum of all the supplies in all the various army departments. In addition to this, he procured to be made and issued all the ready-made clothing and camp equipage for the troops at New London and elsewhere, in the district and for the recruiting service, as I believe, to a great extent. At the time the British fleet was blockading Commodore Decatur's ships, and threatening their destruction, it became necessary to keep out large bodies of militia, who required camp equipage, &c.; he exerted himself in every respect, and, as I verily believe, in addition to his personal exertions, lending his own personal credit to obtain supplies, the credit of the government being at that time prostrated in New England, by which he has always claimed a heavy loss in consequence of paying specie paper and receiving a depreciated currency.

The duties that were performed were, in other districts, divided between several public officers. I may cheerfully say, that not only the commanding and other officers of the district but Commodore Decatur, looked to him on all emergencies during the war, and that but for his exertions and his personal credit, the public service must have suffered.

JACOB KINGSBURY.

*Late Inspector General in the U. S. Army.*

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*General Cushing's orders.*

HEADQUARTERS MILITARY DISTRICT No. 2,  
New London, September 8, 1814.

SIR: Your letter of the 30th of August, and 4th and 7th instant, have been duly received.

The arrival of the apothecary general in this district has removed the necessity for acting on the return of Doctor Cunningham.

The enclosed extract from the regulations of the War Department will show, that I have nothing to do with clothing returns, which must, in all cases, be signed by the senior officer of the corps, who will be held accountable for their correctness. Captain McKeon, being the senior officer of artillery in this military district, has been referred to you for such clothing as he is authorized to draw for under these regulations.

I am distressed by the information you give me in relation to the necessary arms for the national troops in this vicinity, as well as by a review of the very limited supply of camp equipage for the militia now in service. For God's sake, exert yourself to relieve our present wants, and to furnish such further supplies as may be called for.

The proclamation of the President, which you will have seen in the public papers, if it has not been officially communicated, admonishes us of what we are to expect from the enemy, and enjoins the most vigorous preparations for the defence of our country. With the proper arms, ammunition, quartermaster's stores, and cash, and the support of the militia of this State, which the proclamation authorizes me to call into service, I should have no fears for the safety of the seacoast. But when I reflect on our own deficiencies, and on the faint hope that



any further portions of the militia will be placed at my disposal, I must own that I am not without my fears, that great and serious depredations may soon be committed within the district under my command.

I am sir, very respectfully, your obedient servant,

T. H. CUSHING,  
*Brigadier General Commanding.*

Colonel ELISHA TRACEY,  
*Deputy Commissary of Purchases, Norwich.*

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*United States Treasurer's certificate.*

TREASURER'S OFFICE, *January 18, 1828.*

I certify that warrant No. 1,797, in favor of Elisha Tracey, for two thousand three hundred and seventy-three dollars and twenty-eight cents, was paid by me on the 29th of December, 1814, and also warrant No. 1,798, in his favor, for forty thousand dollars, paid by draft No. 2,999, on commissioner of loans, New York, the 30th December, 1814, as appears by the books in this office.

T. T. TUCKER,  
*Treasurer United States.*

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*Secretary of War to E. Tracey.*

DEPARTMENT OF WAR, *July 8, 1815.*

SIR: It appears from the several reports made by the accountant of this Department, that there is due to you twenty-nine thousand and sixty-one dollars and forty-one cents; for which amount warrants are made out, and can be immediately paid, either in the District of Columbia, or at Baltimore; but, should you prefer it, the amount will be paid at New York, so soon as the situation of the treasury will admit.

I have the honor to be, with great respect, your ob't. serv't,  
A. J. DALLAS.

E. TRACEY, Esq.

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*Secretary of War to J. Huntington.*

TREASURY DEPARTMENT, *December 22, 1814.*

SIR: Mr. Crary, who holds a draft of the Treasurer upon you for twenty thousand dollars, will shortly present it again for payment. You will be pleased to pay to him in part of the same, the whole amount of money in your hands other than treasury notes; and for the remainder, you will draw and deliver to Mr. Crary, a bill on David Gelston, collector of the customs at New York, who is instructed to pay the same.

You will apprise me of the amount of the bill thus drawn, and will credit it in your accounts as so much money received from the collector of New York.

I am, respectfully, sir, your obedient servant,

A. J. DALLAS.

JEDEDIAH HUNTINGTON, esq.,  
Collector New London.

*Deposition of E. Leffingwell.*

Elish Leffingwell deposeth that he was conversant with the business of Elisha Tracey, esq., deputy commissary ; that he was knowing to the fact, that said Tracey, during the summer 1814, purchased of sundry persons in Providence and Boston, sundry articles of supplies for the army on his credit, which was refused on the credit of the government, amounting to fifteen or sixteen thousand dollars, which he paid interest for until January, 1815, and that said Tracey was obliged to pay in specie or paper of such banks as paid specie for their paper, and that he was knowing to said Tracey's paying the usual premium on said paper ; and further the deponent saith not.

ELISHA LEFFINGWELL.

DECEMBER 20, 1815.

NORWICH, NEW LONDON COUNTY, ss :

Personally appeared before me the above named Elisha Leffingwell, and made oath to the truth of the foregoing statement.

GEORGE PERKINS,

*Justice of the Peace.*

*D. Sheldon to E. Tracey.*

SEPTEMBER 18, 1815.

SIR : Your letter of the 11th instant was received yesterday. The treasury notes were sent to you from the Register's office, on the 12th instant, and doubtless have reached you before this time. There was no delay in this business at the treasury. But three days were consumed (one of which was Sunday) in carrying it through the forms here, including the making out and preparation of the treasury notes.

I am, respectfully, sir, your obedient servant,

D. SHELDON, JR.

ELISHA TRACEY, Esq.

*Deposition of R. H. Nevins.*

STATE OF NEW YORK, ss :

Russell H. Nevins, of the city of New York, stock and exchange broker, being duly sworn, saith, that prior to October 1, in the year of our Lord one thousand eight hundred and fourteen, and since

that time down to the present time, he hath been and still is engaged in the business of buying and selling specie; that in the said month of October, the premium for specie and for specie paper payable in New York paper, varied from six to twelve per cent; in the month of November immediately following, from thirteen to seventeen per cent.; in the month of December following from sixteen to seventeen per cent.; and in the month of January, one thousand eight hundred and fifteen, from twenty to twenty-three per cent. And further this deponent saith not.

RUSSELL H. NEVINS.

Sworn this 2d day of January, 1816, before

PETER WILSON, JR.,

*Notary Public.*

*J. Roberts to E. Tracy.*

KEESVILLE, *Pennsylvania*, May 17, 1823.

SIR: Your letter in relation to your claim on the government reached me a few days ago, and unavoidable engagements has denied me the opportunity of earlier acknowledging it. I regret that at this moment I have not been able to find your letter among those unanswered on my table, nor to lay my hands on it. I think it better not to delay my answer until I recover it. On perusing it, I thought your representation of what took place when your claim was before the Senate in the main correct. My memory did not bear me out in all the circumstances you recounted. I recollect well I thought some part of your claim founded in strong equity, and believed it would have been fairly allowable by a regularly constituted Secretary of the Department of War. I thought at that time that its allowance by Congress was unlikely, because it might go to establish a precedent that would give form to claims less equitable—an apprehension at that time strongly entertained by many members. Fearing for you an unfavorable decision, I offered you my opinion for its withdrawal at that time. The precise features of your claim are not now present to my recollection, and I cannot say with any clearness whether the strong equity I have spoken of belonged to the whole or only to a part of it; some part, however, I am clear I thought entitled to relief. If saving this can be of service to you, it will afford me the truest gratification. Not having your letter to refer to, I am not able to determine if I could say more. Wishing for you that justice which all deserve who lent their substance to the public use in the late war, more especially in its gloomiest period, I am, most respectfully, your friend and servant,

JONATHAN ROBERTS.

General TRACEY.

Rep. C. C. 207—2

*Captain Whiley's certificate.*

NORWICH, Connecticut, September 1828.

During the late war, under an appointment from the United States, I performed the duty of a purchasing commissary in military district No. 2, for which I received the compensation allowed for those services by law; during the same period, there being no other officer in that district of and belonging to the Department of War, I performed all the duty of the Quartermaster's department, the Ordnance department, and, as agent for fortifications and as issuing commissary expended all the money for those various purposes. For these extra services I have claimed a compensation, the admissibility of which has been doubted by the officers of government, under an idea that an officer can receive compensation for only one office; whereas I take it to be every day's practice to pay for extra services. I am informed that during the late war you were an officer receiving pay and emoluments, and at the same time received a commissson on moneys which passed through your hands as military agent for fortifications and other purposes. In case I am correctly informed, will you have the goodness to make a certificate, and affix your signature to it, at the bottom of this communication, and return it to me, certifying what was your rank in the army on which you received your monthly pay and emoluments? and, if so, whether at any time you received a commission as military agent for moneys disbursed by you, for what object the money was disbursed, and to what amount of commissions you had allowed you, together with any other facts you may deem important to me; have the goodness to state the practice, so far as you know it, of allowances for extra services? Be pleased, on any future occasion, to command my services in return.

Yours, &amp;c.

ELISHA TRACEY.

RICHARD WHILEY, Esq.

NEW YORK, September 20, 1828.

DEAR SIR: I have to acknowledge the receipt of your letter, and do not hesitate to give the certificate you require of me.

With great respect, your obedient servant,

R. WHILEY.

ELISHA TRACEY, Esq.

NEW YORK, September 20, 1828.

This may certify that during the great length of time I was in the army it was the usual custom of the service to allow extra pay to officers for the performance of extra duty, which was not connected with the usual duties of the department in which they were serving.

R. WHILEY,

*Late Captain of Artillery.*

P. S. I was allowed extra pay for the superintendence of fortifications, exclusive of my pay in the line and as assisant military agent.

R. WHILEY.

*Secretary of War to the Committee on Claims.*WAR OFFICE, *March 23, 1830.*

SIR: In answer to your inquiry of yesterday, I have the honor to state that Mr. Tracey was appointed agent for fortifications in June, 1808; that in January, 1809, he was directed to perform the duties of the Quartermaster's department; and that in July, 1811, he was instructed to perform the duties of agent of the Ordnance department; and in July, 1812, he was appointed a deputy commissary of purchases.

I have the honor to be, &c.

JOHN H. EATON.

Hon. ELISHA WHITTLESY,  
*Chairman of the Committee of Claims.*

I certify the above is a true copy.

A. RANDOLPH.

*Differences on settlement of the accounts of E. Tracey for commissions for 3d quarter of 1814.*

Balance due him per official statements.....	\$42,373 28
Balance claimed per his statement.....	40,685 08
Difference.....	1,688 20

Arising as follows :

Amount admitted in official statement as pay, forage, and subsistence, as acting assistant deputy quartermaster general from July 1, 1812, to September 30, 1814, not embraced in his statement.....	\$1,789 20
From which deduct this sum overcharged in entering voucher 1, T. Daboll's account in abstract No. 4, purchases for ordnance.....	100 00
This sum overpaid G. Mix for cutting clothes, voucher 39, abstract No. 1.....	1 00
	101 00
Difference.....	1,688 20

*Difference arising on settlement of the accounts of E. Tracey for commissions for the 4th quarter of 1814.*

Balance claimed by him per his statement.....	\$14,593 52
Balance due him per official statements.....	14,442 09
Difference.....	151 43



Arising as follows :

Amount over-credited him on settlement of 27th December, 1814, for forage, and brought to his debit in the present statements.....	\$152 23
Amount overpaid B. Harris for 1,450 bushels coal, voucher, abstracts of ordnance.....	1 00
From which deduct amount short charged enter- ing voucher 18, in abstract for clothing No. 1.....	80
Difference.....	<u>\$151 43</u>

*Difference arising on settlement of the accounts of E. Tracey for com-  
missions for 1st quarter, 1825.*

Amount due him per official statements.....	\$8,642 07
Amount claimed per his statement.....	<u>8,462 78</u>
Difference.....	179 29

Arising as follows :

F. Shephard's account for 33 military coats, not embraced in his statements, but admitted the official statement, Mr. Tracey engaging to procure Mr. Shephard's receipt, and to for- ward it without delay.....	<u>\$231 00</u>
From which deduct amount overpaid William Crooke for hospital stores, voucher 1, abstract No. 4.....	37
Jesse Brown's account for use of room and fire- wood for Mr. Tracey, as agent of fortification, different times at New London, between July 1, 1814, and March 31, 1815 ; inadmissible....	51 34
	51 71
Difference.....	<u>179 29</u>

JULY 1, 1815.

*Difference arising on settlement of the account of E. Tracey for second  
quarter of 1815.*

Amount claimed per his statement.....	\$6,678 53
Amount due him per official statements.....	<u>5,977 25</u>
Difference.....	<u>701 28</u>

Amount overcharged for his compensation, a commission of 2½ per cent. on his disbursements amounting to \$1,798 72, \$2,000 charged.....	201 28
Amount of one year's clerk hire deducted, in consequence of of the payments made the clerks for services for inspecting.....	500 00
Difference.....	<u>\$701 28</u>

IN SENATE OF THE UNITED STATES.—*February 18, 1828.*

Mr. RUGGLES, from the Committee of Claims, to whom was referred the petition of Elisha Tracey, late deputy commissary general of purchases, report :

That the petitioner was appointed a deputy commissary general of purchases on the 15th day of July, 1812, and continued to discharge the duties of the said office until the 30th of June, 1815, for which services he has received his regular pay as allowed by law. While in the performance of these duties, he was required by the government to perform additional services in the ordnance, fortifications, and quartermaster's department, and as issuing commissary, there being no officer stationed in that quarter to perform those duties, for which he has received \$1,637 97, which sum was ordered to be paid to the petitioner by the Secretary of War. Upon a full examination of the case, and considering the various and arduous duties performed by the petitioner, the committee are of opinion that he is entitled to further remuneration, and believe it would be no more than justice to allow him the full pay and emoluments of an issuing commissary, in full satisfaction for those various services. The petitioner's claims are similar to those of Amasa Stetson, of Boston, and Samuel Russell, of New York, for whose relief laws have heretofore been passed. The pay of an issuing commissary, together with the emoluments, for the three years during which the petitioner served, amounts to \$5,635, from which is to be deducted the sum paid to the petitioner by order of the Secretary of War, \$1,637 97, leaving a balance due of \$3,997 03.

The petitioner claims the reimbursement of money advanced by him for the payment of interest to the banks, for moneys loaned by him for the benefit of the government, and applied solely for its use. The committee are of opinion that this constitutes a just claim against the government, and ought to be paid to the petitioner. It appears by the evidence offered to the committee that the sum of \$348 25 was paid for interest as aforesaid ; the aggregate amount, therefore, for which the committee report a bill, is \$4,345 28, in full for all claims submitted by him. The other items of claim prayed for by the petitioner, the committee are of opinion ought not to be allowed.

IN SENATE OF THE UNITED STATES.—*February 18, 1828.*

Mr. RUGGLES, from the Committee on Claims, reported the following bill; which was read, and passed to a second reading.

A BILL FOR THE RELIEF OF ELISHA TRACEY.

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled,* That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay to Elisha Tracey, of Connecticut, out of any moneys in the Treasury, not otherwise appropriated, the sum of four thousand three hundred forty-five dollars and twenty-eight cents; being for interest on moneys advanced by him for the United States, and for services rendered in the ordnance, fortifications, and quartermaster's department, and as issuing commissary.

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*Evidence offered on the part of the United States.*

Report 354, House reports, 21st Congress, 1st session, April 10, 1830.

Mr. Tracey to the Committee on Claims; remarks on the foregoing report, April, 1830.

Mr. Tracey to the Chairman of the Committee on Claims, June 17, 1830.

The Third Auditor to the Deputy Solicitor, July 20, 1858, enclosing three papers.

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ELISHA TRACEY.

APRIL 10, 1830.—Read, and, with the bill, committed to the Committee of the Whole House to-morrow.

Mr. McINTIRE, from the Committee on Claims, to which was referred the bill from the Senate, for the relief of Elisha Tracy, made the following report:

*The Committee on Claims, to which was referred the bill from the Senate for the relief of Elisha Tracey, report:*

That the petitioner was appointed a deputy commissary general of purchases on the 15th day of July, 1812, and continued to discharge the duties of that office until the 30th June, 1815, for which services he has received his regular pay as allowed by law. Previous to this time, he had been in public service as agent for the fortifications and ordnance, which duties he continued to perform, together with other duties in the Quartermaster's department, and some other analogous duties, and as issuing commissary during the time he was deputy commissary general of purchases, and six months after. For these duties, he was paid the pay and emoluments of an assistant deputy quartermaster

general, from the 1st July, 1812, to the 30th September, 1814; and the same for the last six month after his pay as deputy commissary general of purchases stopped. This allowance was made him by the special orders of the Secretary of War, as an extra allowance for extra duties in the several capacities in which he served, and not as an officer holding that office. He was, during that time, allowed fifteen hundred dollars for clerk hire, five hundred of which was paid to his clerks as inspectors of clothing.

The Committee of the Senate, in their report, were of opinion that this allowance, by the Secretary of War, was not a full and adequate compensation for his arduous services; and in the bill have provided for his relief the difference in pay between an assistant deputy quartermaster general and that of an issuing commissary, for three years.

This committee, considering that the allowance for extra services was made by the Secretary of War with a knowledge at the time of the extent of the petitioner's services, and all the circumstances attending them, is of the opinion that, at this day, and at best with but partial view of the case, it would be unsafe and improper to revise the Secretary's decision. The Secretary was surely competent to judge of the value of extra services, especially as he was familiar with what was extra and what ordinary services in similar cases. It is a mere matter of judgment, and to revise this, after a lapse of fifteen years, would not be advisable or justifiable, unless there was evidently a great palpable error. Indeed, the government can never know when it has discharged its obligations to its agents for their services if the decision of its highest officers is to be appealed from in all cases, and unlimited as to time. It is believed, and the experience of every man who took any part in the public transactions at that period is appealed to to sustain the belief, that scarcely an officer of the government, of any grade, was not frequently called on to discharge duties not strictly within the range of duties, upon a rigid construction of them, few of whom ever claimed or received any extra pay. If all these transactions are at this day to be called up, there will be no end or limit to legislation on this subject. To be perpetually legislating on these subjects by special laws for relief, renders standing laws and provisions for fixed compensation, and the establishment of executive and accounting officers, nugatory.

The committee do not perceive any gross injustice in this case that would justify legislative interference. The petitioner no doubt discharged the duties assigned him with promptitude and fidelity, for which he has received a compensation of about two thousand dollars per annum in the grade he held, and the pay and emoluments of a captain of infantry for extra services. It may be, some other officers fared better; but it is believed most others were obliged to be satisfied with the pay and emoluments of but one office, whatever services they might have performed.

The other item embraced in the bill is the sum of \$348 25, advanced by the petitioner for interest on money loaned at banks for the use and benefit of the government.

This committee has looked into the evidence of this, and all that

can be found are two certificates of the cashiers of Norwich and New London banks, that the petitioner had accomodation at those banks of certain sums, for certain periods, which, in their opinion and belief, was for the use and benefit of the United States. To say nothing of the objection, that these are mere certificates and not under oath, and not such evidence as is required by this committee to substantiate claims before it, this evidence is too loose and uncertain for sound, cautious legislation, in matters of so long standing.

The petitioner may have rightful claim for this and other items in his petition and papers; but, in the opinion of the committee, he has failed to adduce that unequivocal proof that is requisite to entitle him to relief.

The inference the petitioner would have drawn, that because, at the several periods when his accounts were stated, balances were found in his favor, he was in advance to the United States out of his private funds, for which he ought to have interest, does not follow. At that period, it is well known that disbursing and purchasing officers frequently, when out of funds, and the exigency of the service required, or a favorable opportunity presented, made purchases, took receipts, and gave due bills, to be paid when in funds. In this way they appeared, on the face of their accounts, to be in advance to the United States, when in point of fact it was the sellers of the articles purchased that were so. How far, or if at all, this was the case with the petitioner, does not appear from his documents.

The petitioner has received as purchasing commissary.....	\$5,724 95
Extra pay as assistant quartermaster general.....	1,637 97
Pay as assistant quartermaster general, after his office as commissary had ceased.....	387 20
	<hr/>
	7,750 12
Clerk hire.....	1,500 00
	<hr/>
	9,250 12
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The Committee of Claims of the Senate, in its report of this case, on which this bill is founded, refer to the case of Amasa Stetson for a precedent. On recurring to that claim, it appears a bill was, on the 5th of May, 1824, passed for his relief, for a specific sum, as compensation for services of various descriptions, interest on money advanced, and warrants issued in his favor. In the report of the Senate on the subject of that bill, it is stated that for nearly four years' service, of great value and responsibility, he had received only \$5,444 74, and proposed to give him the pay of an issuing commissary for three years three months and a third, amounting to \$3,618 67. In the House the bill was altered in its whole phraseology, to embrace pay for services and interest on money and warrants, and by which it does not appear how much was allowed for each. In that case, Stetson had not received anything for extra services, nor does it appear he received anything for clerk hire. The bill was passed under the peculiar circumstances of that case, and cannot be a precedent, as to amount, in



any other case. Even if allowed, the amount named in the report of the Senate, it did not, when added to what he had before received, amount to so much as the petitioner in this case has received, considering the difference in the term of service and the clerk hire.

Stetson's pay as purchasing commissary..... \$5,444 74

Extra, as issuing commissary, if received ..... 3,618 67

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9,063 41

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In respect to interest paid by the petitioner for money necessarily used in the public service, if any such has been paid, or for interest on moneys actually advanced by him necessarily in the purchases he made, and benefit of which last purchases the United States has enjoyed, if any such have been advanced, the committee give no opinion to exclude the petitioner, should he hereafter satisfactorily show that he has paid such interest or made such advances. The proofs adduced do not satisfy the committee on this part of his claim.

The committee therefore recommend the adoption of the following resolution :

*Resolved*, That the bill from the Senate for the relief of Elisha Tracey be rejected.

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*To the gentlemen of the Committee of Claims of the House of Representatives :*

GENTLEMEN : Since my return home my friends have sent me your report on the bill from the Senate for my relief ; permit me to make to you some remarks upon it. Your report states that I performed the duties of five different officers, during the three years, less fifteen days, of my being a deputy commissary general of purchases, and for six months after. The duties of the other four, for which was allowed and paid to me the full compensation of a deputy commissary general of purchases and an allowance for extra services, by the Secretary of War, of \$1,638 ; for the other four offices, and subsequently, \$387, making together about \$2,025 for the performance of the duties of these offices for three and a half years ; being less than six hundred dollars per annum for performance of the duties of four offices. Can you for a moment believe this a reasonable compensation? Can you believe the Secretary of War thought so? By referring to the written order for allowance by the Secretary, you will see it expressly states the pay, &c., of a deputy quartermaster general. This was the extent of his power ; he would have allowed a higher grade, but that would require the consent of the Senate. He never did suppose he had made a full compensation ; but, for argument's sake, suppose I am wrong in this : can you, can Congress suppose this a reasonable compensation in time of war? If not, why then permit me to lay my head upon the bosoms of my political fathers, and ask from them that justice and equity that my services deserve?

By the answer of the Secretary of War to your inquiries you have the evidence of my appointment to the various offices ; and be it re-

membered that during the whole war, I was the only officer in military district No. 2 to perform these duties, whatever may have been insinuated to the committee, except some short time a militia officer, attached to militia only. Was it proper to charge to my account of compensation \$1,500 clerk hire, when the official statements before you showed that I received only \$1,000—a sum greatly below what every man will know I must have expended in more than three years? Was it proper to take into consideration the sum allowed for clerk hire at all? The committee have been led into many errors in comparing my case with Mr. Stetson's. They have stated that it does not appear that any allowance was ever made to Mr. Stetson for clerk hire. By re-examining his accounts it will appear he was allowed \$1,500, whereas the allowance to me was only \$1,000; when in fact every man knows four times the sum may with more ease be expended, in such a place as the city of Boston, than can be with the same labor in a small town like the place of my residence. Again, the report has stated the amount for relief of Mr. Stetson to be \$3,618 67, when in fact the bill for his relief that passed was for \$6,215. What might have been the phraseology of the bill of the House of Representatives I know not, neither is it material in his or my case: the amount constitutes the great object. He claimed interest on warrants; I did on official settlements: they are both the same thing. Warrants were also drawn in my favor, and lay in the office. Is it not a little singular that the errors of the committee should have swelled my allowances and stated Mr. Stetson's so much less than they were? Far be it from me to intimate that the committee intended to present the facts so as to mislead the House, but I put it to the committee whether the facts, as stated by them, will not have such an effect? And had the committee been kind enough to have permitted me to see the report before its going to the House, I certainly could have convinced them that in many respects it was wrong in material facts. Mr Stetson was at the War Office allowed interest on the certificate of Wm. Gray and others, amount not precisely remembered, but believed to be \$1,200; to which add his pay as purchasing commissary, \$5,444 74; allowed him at the War Office for clerk hire, \$1,500; bill passed for his relief in 1824, \$6,215: according to the principles adopted by the committee in the Tracey case amounting to \$14,359 74. So far as I have been acquainted with legislation the rule has been to present a petitioner's case in as fair a view as the circumstances will warrant. Will not therefore the honorable committee review this case, and change the nature of their report?

Respectfully, &c.,

E. TRACEY.

NORWICH, CONN., *April*, 1830.

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NORWICH, CONNECTICUT, *June 17*, 1830.

SIR: My mind has dwelt with so much unexpected disappointment upon the course taken by the Committee of Claims of the House of Representatives respecting my claim, that I am desirous of asking of

you some explanation, if you are willing to give it. The government I certainly know are truly and justly indebted to me a sum much larger than was provided for in the Senate's bill, and if they would permit me to call them into a court of law I would never trouble Congress respecting it. The committee of the Senate, when my case was before them, made, what I suppose is the usual practice, an application to the different offices for information; when that was obtained they invited me into their room, to compare my claim with the report and to explain my case. I consider the department reports representing the government there, always in their reports rather bearing against a claim, and the petitioner representing himself—the committee sitting in chancery between the parties; and so far as I have been acquainted with legislation a committee not clearly against a petitioner has always considered it proper to report in his favor, that his friends may explain in the House—his success being dependent on the adverse party sense of justice and liberality; and in cases where difficulties occur, the practice I know to be with other committees of your House to state them to the petitioner, and see if he can explain or remove them. The reports you obtained from the department rather strengthened than weakened my claim; and that, with the circumstance of the bill in my favor passing the Senate without a dissenting voice, left on my mind no suspicion of a report against me. Had your committee been kind enough to have admitted me into their room, when I several times requested it, and have showed me their report as drawn up, I could have convinced them of its incorrectness. I had understood the gentleman who purports to have drawn the report, that they should probably adopt the Senate's report. I feel surprised that the figures in the report making up the sum allowed me should state fifteen hundred dollars for clerk hire, when the department reported it at one thousand. Why take any notice of the allowances for clerk hire? The committee must have known that I must have expended a much greater sum; in fact, had on an average three clerks during the war, and the clerk hire allowed, and the extra allowance, as it is called, would not have paid them. Why notice three hundred and eighty-seven dollars allowed me long after peace took place, for continuing the work, &c., in a public arsenal? As well might you charge me for compensation I might be receiving at this time for services rendered the public at this time. But when I look at the stated compensation of Amasa Stetson, put into the report to compare with mine, I am still more astonished. First, that it does not appear that he had any clerk hire allowed him, when I know that he had fifteen hundred dollars, and that his expenses for clerk hire were less than half mine, and necessarily so. When a copy of the bill that passed in favor of Stetson was before your committee, and showed the sum to have been between six and seven thousand dollars, by what calculation of figures could it have been stated at less than four thousand? And, again, the same remarks may be made as to the time of service. The fact was, we were both appointed about the same time, but I continued in service the longest. These various mistakes convince me that the committee did not have the proper view of my claim that they would have had, had they permitted me to explain to them before they made

their report ; which you may rest assured is very unjust in its effect on me. I knew that I had one personal enemy on that committee, that would insinuate objections in secret ; but I placed my reliance on the long acquaintance and friendship existing with you to counteract its effect, by giving me an opportunity to counteract it by explanation. Far be it from me to suggest that I expected from you any departure from your duty to the government out of personal friendship to me. Your character for vigilantly examining claims precludes any possibility of such a thought, as well as your integrity ; but I do confess that I did expect that I might, from our acquaintance and friendship, have been informed of any objections to my claim, so as to have given me an opportunity to have removed them, and at any rate to have prevented so incorrect a statement of facts ; and in this idea and expectation I am not aware that there is anything wrong. And may I not now as a friend and a citizen ask you to review these circumstances, and as an individual give me your views and opinion respecting my claim? One thing, my friend, I must say to you, that committees never should wrap themselves in mystery and privacy. I mean nothing wrong ; but the citizens are entitled to kindness and frankness, and I trust you feel on this subject as I do. Your committee criticises upon the proof respecting the interest paid banks, about three hundred and forty-eight dollars, less than two hundred dollars at a place ; is it possible that an official certificate of a cashier is not good for that amount? One of your committee knew the handwriting as well as his own. In the Senate the proof of this item was called for and read publicly, and the Senator calling for it pronounced it satisfactory. What right have I to compel them to swear, and shall I lose this little sum on this account? Besides, one of them is dead, and this was well known to one of your committee.

ELISHA TRACEY.

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*Third Auditor to Deputy Solicitor.—Filed, July 20, 1858.*

TREASURY DEPARTMENT,  
*Third Auditor's Office, July 15, 1851.*

SIR: I yesterday received yours of the 13th instant, stating that in March, 1830 a report was made by this office to the chairman of the Committee on Claims upon the claim of Elisha Tracey, in which the committee was informed that the Secretary of War had allowed said Tracey the sum of \$1,637 97 for his services, &c., that, if possible, you would like to lay before the Court of Claims a copy of the account presented by Mr. Tracey, the decision of the Secretary, the account stated at the treasury, and all the accompanying papers.

I accordingly in reply transmit herewith the copies of the following papers, to wit:

First. A statement of the compensation received by said Tracey from the 15th of July, 1812, the date of his acceptance of the appointment of deputy commissary, to the 30th of June, 1815, when he ceased to disburse as such, amounting to \$5,724 95, with an allow-

ance by the Secretary of War on the 21st of December, 1814, for extra duties performed by him in the Quartermaster's department, from July 1, to September 30, 1814, being the pay and emoluments of an assistant deputy quartermaster general, of \$1,637 97; also an allowance in the same capacity by the Secretary of War, in January, 1816, for disbursements out of the line of his duty, from the 1st of July to the 31st of December, 1815, of \$387 20, amounting altogether to the sum of \$7,750 12.

Second. A report to the Secretary of War, by Tobias Lear, accountant of the War Department, of the 16th of December, 1814, upon which the Secretary made the allowance of \$1,637 97 before referred to; and

Third. An *unfinished* report of the Third Auditor upon an account of Elisha Tracey, presented on the 11th of February, 1828, in which he claimed to be due him, for various services, as an assistant deputy quartermaster general from the 1st of July, 1812, to the 31st of December, 1815, a balance of \$1,036 53. The reason why this report was not finished is explained by the following endorsement upon one of the papers, to wit: "On the 11th of February, 1828, Mr. Tracey presented an account claiming additional allowances as assistant quartermaster, amounting to \$1,036 53, which he withdrew on the 12th of February, 1828, (previous to the Third Auditor finishing a report thereon,) stating that '*he was satisfied he had no claim to further allowances.*'" And, further, by the following endorsement upon said unfinished report, to wit: "Before this report was finished, Mr. Tracey called at the office, and was shown by Mr. Hagner the former accounts, and explained to him the principles of the allowances, with which Mr. Tracey was *satisfied*, and *withdrew his accounts* presented yesterday," February 12, 1828.

Your attention is respectfully called to the 2d, 3d, 5th and 7th sections of the act entitled "an act to establish a Quartermaster's department, and for other purposes," approved March 28, 1812, which prescribes the duties and fixes the compensation of assistant deputy quartermasters general and deputy commissaries general, to show that Mr. Tracey's accounts for all the compensation due him were settled and paid in accordance therewith.

I am, very respectfully, your obedient servant,

ROBT. J. ATKINSON, *Auditor.*

J. D. McPHERSON, Esq.,

*Deputy Solicitor Court of Claims, Washington, D. C.*

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*Statement of compensation received.*

[Not enclosed in Third Auditor's report of July 15, 1858.]

No. 1.

Elisha Tracey received his compensation as deputy commissary from the 15th of July, 1812, the date of his acceptance, to the 30th of June, 1813, at the rate of \$2,000 per annum—his disbursements as such in that period exceeding that sum, (Account No. 3443,)..... \$1,926 23



Received his compensation as deputy commissary from the 1st of July, 1813, to the 30th of June, 1814, a commission of  $2\frac{1}{2}$  per cent. exceeding this sum, (No. 4562,)..... \$2,000 00

Received a commission of  $2\frac{1}{2}$  per cent. on the amount of his disbursements in the 3d and 4th quarters of 1814 and 1st and 2d quarters of 1815, (No. 5393,)... .. 1,798 72

Compensation as deputy commissary..... 5,724 95

He received an allowance by order of the Secretary of War, in consequence of extra duties performed by him in the Quartermaster department, from the 1st of July, 1812, to the 30th of September, 1814, the pay and emoluments of an assistant deputy quartermaster general, (No. 4723,).. \$1,637 97

He received an allowance by order of the Secretary of War, for disbursements out of the line of his duty, the pay and emoluments of an assistant deputy quartermaster general from the 1st of July to the 31st of December, 1815; a part of these disbursements were made prior to July, 1815, and about two-thirds thereafter, (No. 6495,) 387 20

2,025 17

### *Recapitulation.*

From the 15th of July, 1812, date of acceptance, to June 30, 1815, when he ceased to disburse as deputy commissary, 3 years, less 15 days..... \$5,724 95

For extra services in the quarter master department from the 1st of July, 1812, to the 30th of September, 1814, special order of the Secretary, 1,637 97

For services, disbursing after he ceased to disburse as deputy commissary from the 1st of July to the 31st of December, 1815, allowed by the secretary..... 387 20

2,025 17

Total from 1st of July, 1812, to 31st of December, 1815, 7,750 12

Truly copied from original on file in this office.

No. 2.

### *Accountant's report.*

(Enclosed in Third Auditor's report of July 15, 1858.)

DEPARTMENT OF WAR,

*Accountant's Office, December 16, 1814.*

Agreeably to the request of the honorable the Secretary of War, the accountant of the War Department has the honor to state that, pre-



vious to the establishment of purchasing commissaries, Mr. Elisha Tracey was appointed agent of fortifications in the State of Connecticut, during which time he was allowed, by the then Secretary of War, a commission of four per cent. on the public moneys disbursed by him.

After Mr. Tracey was appointed deputy purchasing commissary he continued to charge the commission of four per cent. on disbursements made by him in the Quartermaster's and Ordnance departments and on fortifications, besides the commission of  $2\frac{1}{2}$  per cent. on his other disbursements, where the said commission did not exceed \$2,000 per annum, the maximum allowed by law.

The accountant did not admit Mr. Tracey's charge of four per cent., as before stated, after he was appointed deputy purchasing commissary, upon the ground that the law did not grant any allowance for disbursements of public money by a deputy purchasing commissary beyond the sum of \$2,000 per year. Although other deputy purchasing commissaries have made disbursements, (but not to a considerable amount,) out of what has been considered the immediate line of their duty, no additional allowance has been claimed by or made to them. Mr. Tracey has paid (by roll) the wages of persons employed by him in making gun carriages, which does not appear to have been done by any other purchasing commissary; and has made disbursements for the Quartermaster's department on accounts which are excepted from the duties of a purchasing commissary by the regulations of the War Department; but to ascertain the precise amount of these would require a revision of his accounts.

The accountant would beg leave to draw the secretary's attention to the fifth and seventh sections of an act passed on the 28th of March, 1812, "to establish a Quartermaster's department, and for other purposes;" and likewise to the regulations of the War Department under the head of "purchasing department," which may enable him to determine whether Mr. Tracey should receive a further compensation for his services than what is allowed by law to deputy commissaries of purchases.

TOBIAS LEAR.

The Hon. THE SECRETARY OF WAR.

Truly copied from original on file in this office.

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### No. 3.

*Copy of unfinished report, enclosed in Third Auditor's report of July 15, 1858.*

Report of the Third Auditor on the account of Mr. Elisha Tracey, claiming additional compensation for services in making disbursements out of the immediate line of his duty, as deputy commissary.

Mr. Tracey presents his account in the following form:

Dr. the United States to Elisha Tracey, to pay and emoluments of an assistant deputy quartermaster general, from July 1, 1812, to September 30, 1814, is  $2\frac{1}{4}$  years \$2,503 50

From which deduct the sum allowed as per official settlement for 3d quarter of 1814.....	\$1,789 20	
Deduct from the last sum forage for horse, charged back as inadmissible in official statement for 4th quarter, 1814.....	151 23	
	<hr/>	\$1,637 97
		<hr/>
		865 53
To pay and emoluments of an assistant quartermaster general from July 1, 1815, to January 1, 1816, one-half year.....	558 00	
From which deduct the sum allowed on settlement of December 31, 1815.....	387 00	
	<hr/>	171 00
		<hr/>
The sum claimed as balance due being.....		1,036 53

On the settlement of Mr. Tracey's account as deputy commissary for disbursements to the 30th of September, 1814, a claim then made by him for extra compensation for his services in making disbursements in the Quartermaster department, was submitted to the Secretary of War for his decision, who directed the accountant of the War Department to allow the pay and emoluments of an assistant deputy quartermaster to the time, but that no further compensation of the kind was to be allowed him. According to this decision Mr. Tracey was allowed the pay and subsistence of an assistant deputy quartermaster from the first July, 1812, to the 30th September, 1814, including forage for the time in the above period; which assistant deputy quartermasters were by law entitled to such allowance, as will be seen by reference to the account and documents herewith transmitted marked

A. Mr. Tracey after ceasing to disburse as deputy commissary, for which he had received compensation to the 30th June, 1815, made disbursements on account of the construction of gun carriages, repairs of fortifications, &c., between the 1st July and 31st December, 1815, on the amount disbursed in this period, the usual commission of 2½ per cent. allowed to deputy commissaries, would not exceed \$150; and as Mr. Tracey had charged for his compensation one thousand dollars a report on the subject of his compensation was made by the accountant of the War Department, and submitted to the Secretary, who directed the allowance of the pay and emoluments of an assistant deputy quartermaster, for the services he performed since the 1st July, 1815, which allowance was made to Mr. Tracey, as will be perceived by reference to the accompanying accounts and reports marked B.

Assistant quartermasters were not allowed forage after 3d March, 1813, and under the regulations of the War Department, money in lieu of fuel and quarters was not admissible. I consider the account as closed, the allowance being an extra one, and no doubt when settled was according to the understanding of the proper authority.

Truly copied from original on file in this office.

## IN THE COURT OF CLAIMS.

ERASTUS WILLIAMS, administrator of ELISHA TRACEY, *vs.* THE UNITED STATES.

## PETITIONER'S BRIEF.

*Statement of facts and claims of petition.*

Elisha Tracey, late of Norwich, deceased, prior to the last war with Great Britain, was appointed, under the direction of the President of the United States, *an agent for fortifications*, and soon afterwards was directed to perform the duties of the *Quartermaster's department* within the district in which he resided. In the month of June, 1811, he was directed by the Secretary of War to erect a public arsenal for manufacturing travelling and gun carriages, and other implements of war, when he employed a large number of artificers during the whole period that the war continued, as an *agent of the ordnance department*. In the year 1812, soon after the declaration of war, he was appointed a *purchasing commissary*. During the whole period of the war he continued to perform, in military district number two, the duties of the said four offices, there being no other person in said district appointed or acting in the discharge of said duties. For all said services compensation was, at the time, claimed by said Tracey; but, with the exception of a small allowance of \$1,637 97, made to him at one time by the Secretary of War, the only compensation allowed him was that of a purchasing commissary. During the same period of time there were four distinct officers in other districts of the United States in the discharge of these separate duties, and receiving compensation therefor. During the same period of time, in addition to the foregoing, he performed the duties of an *issuing commissary*. The duties imposed upon him in the discharge of these offices were arduous and responsible, and more than half a million of dollars were disbursed by him on account of the government during said period; all of which services were most faithfully performed, and to the satisfaction of the government; and the petitioner claims that the said Tracey was entitled to receive the compensation appropriate to the several offices, and for which no adequate compensation has been made.

The petitioner further states, that, not being furnished with funds by the United States, between the 1st day of January and the 27th June, 1813, he advanced his own funds for the use of the United States, by borrowing money from the banks at Norwich and New London, on which he paid interest amounting to the sum of \$348 25.

Also, that the said Tracey having received a draft from the Treasury for the sum of \$20,009, and the same having been protested, he paid interest on the same from the 30th September to the 31 December, 1814, amounting to the sum of \$300.

The treasury notes and other funds received by said Tracey from the United States, were at that time so far depreciated in market that, in order to convert the same into specie, there was an actual loss of \$3,080, being for the difference of exchange for specie paid in Boston and Providence, and received in New York funds. It also appears

from the official statements of the Treasury Department that said Tracey was, at the different periods shown by the said accounts, in advance for a large amount to the United States, as will appear by said official statements and the accounts of said Tracey at the treasury. That the interest on said balances, as shown by said statements while the same continued, amounted to the sum of \$1,604 37.

*I. Compensation as agent for fortifications, as acting quartermaster, and as agent for the ordnance department.*

From an official statement of the Secretary of War, the dates of his appointment to these offices appear. This is addressed to the chairman of the Committee on Claims, dated March 23, 1830, and is as follows, viz: (Rec. p. 20.)

“SIR: In answer to your inquiry of yesterday, I have the honor to state that Mr. Tracey was appointed agent for fortifications in June, 1808; that in January, 1809, he was directed to perform the duties of the Quartermaster's department, and that in July, 1811, he was instructed to perform the duties of agent of the ordnance department, and in July, 1812, he was appointed a deputy commissary of purchases.”

The following official statement shows the disbursements made by Mr. Tracey in the discharge of the duties of these offices:

Statement exhibiting the disbursements made by Elisha Tracey in each year, and in the different offices he held, furnished in pursuance of a request from the Committee on Claims of the House of Representatives, dated 29th March, 1830, viz:

For the commissary department, on account  
of clothing, between 15th July, 1812, and  
30th June, 1815—

In the year 1813.....	\$210,669 10
In the year 1814.....	159,302 55
To 30th June, 1815.....	4,635 60
	<hr/> \$374,407 25

For the Quartermaster's department—

On account of Quartermaster's department,

July to 31st December, 1812.....	1,711 91
In the year 1813.....	21,368 23
In the year 1814.....	28,196 52
To 30th June, 1815.....	1,576 40
	<hr/> 52,847 06

On account of ordnance—

July to 31st December, 1812.....	\$6,069 63
In the year 1813.....	19,546 67
In the year 1814.....	18,276 11
To the 30th June, 1815.....	4,372 24
	<hr/> \$48,258 64

On account of fortifications—	
July to 31st December, 1812.....	1,815 29
In the year 1813.....	18,017 69
In the year 1814.....	9,351 85
To the 30th June, 1815.....	661 67
	<hr/> 30,346 50 <hr/>

On account of hospital department—	
July to 31st December, 1812.....	10 79
In the year 1813.....	137 39
In the year 1814 . . . . .	383 47
To 30th June, 1815.....	604 01
	<hr/> 1,135 66 <hr/>

On account of contingencies—	
In the year 1813.....	203 25
In the year 1814.....	527 71
To the 30th June, 1815.....	170 68
	<hr/> 901 64 <hr/>

“The last two items for hospital department and contingencies were not embraced in the former statement furnished, not being in the call of the committee

“Subsequent to the 30th June, 1815, when Mr. Tracey’s duties ceased as deputy commissary general, he made disbursements as an acting deputy quartermaster general, from July to December, 1815, as follows:

On account of clothing for beds due 1813.....	\$87 87
On account of quartermaster’s department.....	518 07
On account of ordnance.....	4,624 23
On account of fortifications.....	799 79
On account of hospital department.....	377 43
	<hr/> \$6,406 29 <hr/>

“PETER HAGNER, *Auditor.*

“TREASURY DEPARTMENT,

“*Third Auditor’s Office, March 29, 1830.*”

1. In relation to his duties in the Quartermaster’s department.

The compensation of the lowest officer in this department, that of assistant deputy quartermaster, was fixed by law by the act of 28th March, 1812, (2 Stat., 696;) and in the second section, provided that “the assistant deputy quartermasters, when not taken from the line, shall be entitled to receive forty dollars per month, three rations per day, and forage for one horse,” &c.

In relation to the services performed prior to the passage of this act fixing compensation, although the petitioner would not be limited to this compensation, in view of this legislative valuation of such service, he would probably be bound by it—no less sum, certainly, would be fixed.



The amount, then, to which he would be entitled on this principle can be readily determined. His appointment, as appears by the official statement of the Secretary of War, was dated in January, 1809, and he ceased to hold the office on the 30th June, 1815—a period of six and a half years.

The pay being \$40 per month, and the forage for one horse eight dollars, being the rate adopted by law, gives the aggregate per month of \$56; and per annum of six hundred and seventy-two dollars; and for the whole period of six and a half years, the amount to which he was by law entitled, is.....	\$4,408 00
From this deduct the amount received.....	1,637 97

Leaving due for services in the quartermaster's department.....	2,760 03
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2. It also appears from the same official report that Mr. Tracey was appointed agent for fortifications in June, 1808, and continued in that office until June, 1815—a period of seven years.

3. And in July 1811, he was appointed to perform the duties of agent of the ordnance department to and after the 30th June, 1815—a period a few days short of four years.

There is no compensation fixed by statute for the services of persons holding these offices.

It would seem that something more than a mere commission should be allowed for the discharge of the duties of offices involving labors and responsibilities beyond the mere disbursement of money.

If, however, it be limited to a commission on the disbursements, the question arises as to the amount of commission to be allowed? It would seem that a commission of four per cent. should be allowed on his disbursements as agent of the Ordnance department, and for fortifications. Mr. Tobias Lear, in an official communication to the Secretary of War, dated December 16, 1814, says:

“Agreeably to the request of the honorable the Secretary of War, the Accountant of the War Department has the honor to state that, previous to the establishment of purchasing commissaries, Mr. Elisha Tracey was appointed agent of fortifications in the State of Connecticut, during which time he was allowed by the then Secretary of War a commission of four per cent. on the public moneys disbursed by him.

“After Mr. Tracey was appointed deputy purchasing commissary he continued to charge the commission of four per cent. on disbursements made by him in the Quartermaster's and Ordnance departments, and on fortifications, besides the commission of  $2\frac{1}{2}$  per cent. on his other disbursements, where the said commission did not exceed two thousand dollars per annum, the maximum allowed by law.

“The Accountant did not admit Mr. Tracey's charge of four per cent., as before stated, after he was appointed deputy purchasing commissary, upon the ground that the law did not grant any allowance for disbursements of public money by a deputy purchasing commissary beyond the sum of \$2,000 per year.”



It thus appears that the allowance to Col. Tracey by the War Department as agent of fortifications was a commission of four per cent. on his disbursements. This was paid to him up to the time when he was appointed assistant commissary, which was in July, 1812.

The amount of disbursements subsequent to July, 1812, and to the 30th June 1815, by Col Tracey, on account of ordnance, was \$48,268 64, and for fortifications, \$30,346 50. A commission of four per cent. on these two amounts would be \$3,144 20.

It would seem by a reference to the law prescribing the duties of the commissary department, and to the fact of the previous appointment of Col. Tracey as agent of fortification and ordnance, and to the duties pertaining to these offices, that this compensation was improperly withheld; and that at least the sum of \$3,144 20 should be added to the balance due on Col. Tracey's salary as in the Quartermaster's department of \$2,760 03; making for the two, the sum actually and legally due of \$5,904 23.

II. In relation to the draft of \$20,000 drawn by the Treasurer of the United States in favor of Colonel Tracey, upon the collector at New London. This draft was drawn at sight in favor of "Elisha Tracey, esq., deputy commissary, or order," signed by the Treasurer, and addressed to "Jedediah Huntington, collector of New London." The collector, by the order of the government, proposed to pay to Colonel Tracey this draft in treasury notes, at a great discount at that time. Colonel Tracey refused to receive these notes as money, and the draft was protested on the 4th of October, and subsequently paid, having been endorsed by Colonel Tracey to a third person.

On this matter, Mr. Dallas, then Secretary of War, says, in an official communication, January 20, 1816, (Rec., p. 11 :) :

TREASURY DEPARTMENT, *January 20, 1816.*

"SIR: The fact that the Treasurer's draft in your favor for \$20,000 upon the contractor at New London, dated the 24th day of September, 1814, was protested, and that it was not paid until the 31st day of December, 1814, are incontrovertibly true. But in order to enable me to admit those facts, I have been under the necessity to examine the course of the transaction, as it appears from your letters and the records of this office, and I find that the draft was remitted to you in your official capacity as a deputy commissary; that you were offered payment in treasury notes, but declined it: and that you caused the draft to be protested, but still stated that it was an affair of the government."

This draft for \$20,000 was paid in fact by a draft in favor of Col. Tracey, drawn by the collector at New London, on D. Gelston, collector at New York, for \$14,500. This was done by the order of Mr. Dallas, Secretary of the Treasury, of the 22d December, 1814, (Rec., p. 17,) as follows:

"SIR: Mr. Tracey, who holds a draft of the Treasurer upon you for twenty thousand dollars, will shortly present it again for payment. You will be pleased to pay to him, in part of the same, the whole

amount of money in your hands other than treasury notes, and for the remainder you will draw and deliver to Mr. Tracey a bill on David Gelston, collector of the customs at New York, who is instructed to pay the same."

This order was paid on the 6th January, 1815, (Rec., p. 14,) by Mr. Gelston in funds which were from 20 to 23 per cent. below specie par, (Mr. Nevins's dep., Rec., p. 18.)

It thus appears, that in this transaction Col. Tracey was obliged, from his own funds, to pay the interest which accrued on the over due draft of the government, which was protested for non-payment because Colonel Tracey refused to receive payment in depreciated treasury notes. This was not only a direct loss of his, from no fault of his own, and an advance of the sum for the government which they were legally bound to pay, but the government itself had the benefit of it from the fact that the treasury notes offered in payment were themselves on interest, and the payment of the amount at the time would only place them in the same position as if the treasury notes had been received. The amount of this interest was \$300.

The loss on the depreciated paper received in New York from Mr. Gelston at 20 per cent. discount on the \$14,500,	
as appears above and from the testimony, was.....	\$2,900
And adding said sum of \$300.....	300

Making the aggregate loss on the \$20,000 draft by the fault of the government....	3,200
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It is apparent that nothing but the extreme necessities of the government at that time, and their entire inability to pay their debts, could justify such a transaction as is disclosed in relation to this draft; but it affords no reason in law or morals why they should not pay for the losses occasioned by their own fault entirely.

The views entertained as to this claim by two Secretaries—one of the Treasury and the other of War—is shown by the following, (Record, pp. 13, 14 :)

"TREASURY DEPARTMENT, *March 19, 1823.*

"SIR: In reply to your letter of the 22d ultimo, I have the honor to state that I recollect distinctly that when you were in this place in the winter of 1816, you presented an account for interest, and for the difference between the funds received by you and specie, when you had been under the necessity of paying specie in Boston and Providence. I have no recollection of having offered any opinion in favor of the claim of interest upon balances from time to time due you on account, but I recollect distinctly that I was then of opinion that you were entitled to receive from the government the amount of interest you had paid to banks, or upon protested treasury drafts, and for any loss you had sustained in converting the funds placed in your hands by the government, when such conversion was necessary to meet the engagements you contracted on account of the government.

"For interest paid by contractors to banks, on account of the failure

of the government to make the advances stipulated by contract, allowances were made by my direction when in the War Department, and I should not have hesitated to make the same allowance to an officer of the government, had claims of that kind been presented after the decision was made.

"I recollect very distinctly advising you to waive those items in the settlement of your accounts at that time, under a belief that some general provision would be adopted in the course of the session which would prevent the necessity of resorting to any measure by the department which might be considered a departure from the established usage in the settlement of accounts.

"I remain, with respect, your most obedient servant,

"WILLIAM H. CRAWFORD.

"Col. ELISHA TRACEY."

*Secretary of War to E. Tracey.*

"DEPARTMENT OF WAR, *December 19, 1828.*

"SIR: I have examined, with some attention, the papers which you have presented to me in support of your claims against the government for a compensation beyond what you have already received, for services rendered and responsibilities incurred by you during the late war with Great Britain. I think that you have still some equitable claims, and were your case now an original one, it is probable that I should make you some further allowances, without imposing on you the necessity of a resort to Congress. But inasmuch as your claims have already been not only before the department, but also before Congress, I do not feel at liberty to interfere, but recommend to you to continue your application to Congress, as the only means by which you can expect to obtain relief.

"Very respectfully, your obedient servant,

"P. B. PORTER.

"ELISHA TRACEY, Esq."

III. The claim for money borrowed on the credit of Colonel Tracey for the use of the United States, in addition to the amount of his own funds advanced for the benefit of the government, and on which he actually paid interest at the local banks, is clearly just, and the fact is shown not only by the official certificates of the cashiers of those banks, but from the further confirmatory evidence showing the state of the accounts, and that large balances, on settlements at the Treasury, were found in favor of Colonel Tracey and against the United States. The amount of this item is the sum of \$348 25.

IV. The interest on the balances due Colonel Tracey on the settlement of his quarterly accounts furnishes a just ground of claim. That interest should properly be computed to the present time, but is taken merely at the time and computed merely to the time when he was supplied with funds. The amount is \$1,604 37.

As these were acknowledged balances on accounts settled by the government, it is not only clearly just that interest should be paid, but it is believed to belong to the class of cases in which, according to

the practice of the government, interest should be allowed. In relation to this allowance reference is also respectfully made to the consideration on this point contained in the brief of the undersigned in the case of Northrop, administrator of Langdon, *vs.* The United States, pending in this court.

V. In addition to the foregoing, it is respectfully contended that an erroneous construction has been given of the act of Congress of the 28th of March, A. D. 1814, (2 Stat., 696,) in relation to the compensation of an assistant commissary of purchases. It appears that for the third and fourth quarters of 1814 and the first and second quarters of 1815, he received only the sum of \$1,798 72, being the amount of commission, at two and-a-half per cent., on the amount disbursed in those quarters, although, if the whole amount of his disbursements were considered, it would appear that they would exceed, for the whole time, the limit of \$2,000 annually fixed by that act. Under these circumstances, he was clearly entitled to the full sum of \$2,000 for these four quarters.

The considerations on this question are more fully presented in the brief in the case of Northop, administrator of Langdon, above referred to, to which reference is respectfully made.

The amount due by law for these four quarters is.....	\$2,000 00
The amount actually paid is.....	1,798 72
	<hr/>
Leaving a balance due.....	201 38
	<hr/> <hr/>

As the foregoing claims have been constantly demanded and urged, and pressed upon the government, except the last of \$201 38, the petitioner claims interest on the amount found to be due.

JOHN A. ROCKWELL,  
*Of Counsel for Petitioner.*

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IN THE COURT OF CLAIMS.

ERASTUS WILLIAMS, administrator of E. TRACEY, *vs.* THE UNITED STATES.

*Brief of the Deputy Solicitor.*

Elisha Tracey was appointed agent for fortifications in June, 1808 ; an agent to perform the duties of the Quartermaster's department in January, 1809 ; an agent of the Ordnance department, July, 1811 ; and a deputy commissary of purchases, July, 1812. (Record, p. 20.)

His compensation as agent for fortifications and agent of ordnance was a commission of four per cent. on the amount of disbursements, and was paid up to the 15th of July, 1812, when he was appointed deputy commissary of purchases. (Record, p. 32.)

His compensation as agent of the Quartermaster's department was regulated in the same manner, and paid up to the same period. (Record, p. 32.)

On the 15th of July, 1812, he was appointed deputy commissary of purchases. (Record, pp. 20, 30.)

The compensation attached to this office was a commission of  $2\frac{1}{2}$  per cent. on disbursements, provided that the amount should not exceed \$2,000, (2 Stat., 607;) which has been paid, viz:

From July 15, 1812, to June 30, 1813, at \$2,000 per annum .....	\$1,926 23
From July 1, 1813, to June 30, 1814, at \$2,000 per annum .....	2,000 00
From July 1, 1814, to June 30, 1815, commission of $2\frac{1}{2}$ per cent.....	1,798 62
	<hr/>
	5,724 85
	<hr/>

He was also allowed by the Secretary of War the pay and emoluments of an assistant deputy quartermaster from July 1, 1812, to September 30, 1815, (Record, p. 21,) which, according to the act of March 28, 1812, sec. 2, (2 Stat., 606,) were as follows:

Pay for 27 months, at 40.....	\$1,080 08
Forage for 27 months, at \$8.....	216 00
Rations for 822 days, 3 per day, 2,466 rations, at 20 cts..	493 20
	<hr/>
	1,789 20
From this allowance was deducted the sum of.....	151 23
As being over credited for forage, leaving the amount of allowance .....	<hr/>
	1,637 97
	<hr/>

The same rate of pay was allowed him for six months, from July 1, 1815, to December 31, 1815, \$387 20. (Record, pp. 30, 31.)

The last of these allowances was made in January, 1816. (Record, p. 30.)

The claim now presented is for compensation for services and reimbursement for loss of interest, &c., during the period covered by these payments, and for some period previous, and, as stated in the petitioner's brief, as follows:

1. Compensation as quartermaster from January, 1809, to June 30, 1815,  $6\frac{1}{2}$  years, at \$672, making \$4,408, less \$1,637 97 paid, leaving due \$2,760 03. (Brief, p. 4.)

2. Commission on disbursements as agent of fortifications, and agent of ordnance from July, 1812, to June 30, 1815, two and a half per cent. on \$78,615 14, making \$3,144 20. (Brief, p. 5.)

3. Interest on draft for \$20,000, protested and held unpaid for three months, \$300. (Brief, p. 6.)

4. Discount at 20 per cent. on \$14,500 uncurrent money received for said draft, \$2,900. (Brief, p. 6.)

5. Interest on money borrowed from banks for public use, \$348 25. (Brief, p. 7.)

6. Interest on balances due Colonel Tracey on settlement of his quarterly accounts, \$1,604 37. (Brief, p. 7.)



7. A further commission on disbursements as commissary of purchases, to make up the maximum compensation, \$201 38.

In his lifetime, and after he had received the payments above stated, Colonel Tracey prosecuted sundry claims against the United States before the War and Treasury Departments and Congress. Although his petitions or statement are not before us, we have their substance stated in various official reports, which came to his knowledge, and one of which he replied to.

The only items which he himself claimed, are as follows :

Interest on protested draft, (Record, pp. 7 and 11,).....	\$300 00
Discount on depreciated paper, (Record, pp. 7 and 11,)....	3,080 00
Interest paid banks, (Record, pp. 7, 11, and 23,).....	348 25
Interest on quarterly balances, (Record, p. 7,).....	1,604 37
Additional pay as quartermaster, (Record, p. 33,).....	1,036 53
Additional for duty in ordnance, fortification, and quartermaster's departments, (Record, p. 22, 23,).....	3,997 03

Much of the evidence offered is inadmissible under the rules of this court, and, indeed, is not and cannot be made legal evidence in any sense ; but I shall proceed to show that even if the unsworn certificates and *ex parte* affidavits were legal evidence, they do not sustain this claim.

1. *The first item of claim is for compensation as "acting quartermaster" from January 1809, until June 30, 1815.*

This was not claimed by Colonel Tracey.

Colonel Tracey did not hold the office of quartermaster. "He was directed to perform the duties of the quartermaster's department." (Record, p. 20 ) For the services performed under these instructions, his compensation was a commission of four per cent. on his disbursements, and he was paid up to July, 1812. (Record, pp. 32, 33.)

The reports upon Mr. Tracey's claim, which were seen and remarked upon by him in his lifetime, show no claim unpaid prior to his appointment as deputy commissary of purchases in July, 1812.

From July 1, 1812, to September 30, 1814, he has been paid the salary of assistant deputy quartermaster.

From October 1, 1814, to June 30, 1815, he has received a commission on his disbursements, (see remarks above,) or has been paid in some other way. Certainly he has no claim ; for in an account which he rendered in 1828 for services in the Quartermaster's department, he charged only up to the 30th of September, 1814. In that account he stated in effect that the rate of compensation fixed by the Secretary of War was not large enough, but not that it did not cover the whole period of service.

2 *The second item of claim is for a commission of four per cent. on the amount disbursed by him for fortifications and ordnance from July 15, 1812, to June 30, 1815.*

Previous to the passage of the act of March 28, 1812, it was the intention of Congress that all military supplies should be purchased by an officer of the treasury, called the "purveyor of public sup-

plies," (act of February 25, 1795, chap. 27, 1 Stat. 419,) whose salary was \$2,000. The War Department, however, in some cases, appointed agents to disburse its funds. This arrangement was adopted and extended by Congress in preparing for the war of 1812, and by the act of March 28, 1812, the office of purveyor was abolished, and officers of the War Department were appointed to purchase all supplies of every possible kind for that Department. These officers were quartermasters and commissaries. A regulation issued May 1, 1813, declares it to be the duty of the quartermasters to provide certain supplies, and of the commissaries to provide certain other designated articles of supplies, "and all other articles required for the public service of the army of the United States, excepting only such as are directed to be purchased by the Quartermaster general's department." Among those enumerated, are articles of ordnance and supplies required for fortifications.

If, then, the disbursements for ordnance and fortifications were for purchases for those objects, the disbursements were made by him as commissary of purchases or as quartermaster, and he has been compensated by the salary of one or the other office, having received the pay of both.

That the disbursements were for purchases is to be presumed, in the absence of proof to the contrary; but, besides this, we find in the record (p. 21) evidence that as commissary of purchases he did purchase articles of ordnance.

Whether the purchase of materials, and employment and superintendence of persons to make up clothing and other supplies, instead of purchasing in the market, would have been an extra duty, is a question not raised by the evidence.

*The third is for interest on the protested draft.*

The draft was an order on the collector at New London for funds to be disbursed for public purposes. (Record, p. 11.) He did not collect the money for three months. The draft was not his property; it belonged to the United States. He held it as agent of the United States. If, instead of a treasury draft, the department had sent him a banker's draft, and interest had accrued on it, and had been collected, Col. Tracey would have carried it in his accounts to the credit of the United States.

The draft remained the property of the United States in the possession of Col. Tracey, and interest therefore could not run against the United States, or in favor of Col. Tracey.

The whole transaction gives no shadow of plausibility to this claim. Col. Tracey refused to receive treasury notes for this draft, but afterwards, as he alleges, received three-fourths of it in bank paper, 20 per cent. below par. In thus refusing treasury notes, he exercised his discretion as a public officer, certainly not the right of a creditor. This, it seems, (Record, p. 11,) he expressly at the time disclaimed.

*The fourth item is for discount on depreciated bank paper received in part payment of the \$20,000 draft.*

The draft was public property, and whatever money Col. Tracey received for the draft was public money, and was the property of the United States in his hands

If he necessarily allowed a discount in using it, or paid a premium for specie, he might possibly have a claim for reimbursement upon proving such loss or payment; but no such proof is made, though he had notice to produce it in 1829. (Record, p. 13.)

The mere fact that government furnished him depreciated bank paper to be disbursed for the public service is no ground of claim. If Col. Tracey was a creditor of the United States, and received, without objection, or accepted, however reluctantly, bank paper in payment of his debt, the debt was discharged. As a public agent, receiving money to disburse, he cannot be in a better position.

It is matter of history that great part of the revenue of the United States was received and disbursed in bank paper; and every public creditor who was paid in it has as much right now to claim the difference between that and specie as this petition shows to be in Tracey.

There is no evidence that he did receive bank paper for this draft. The certificate of Gelston (Record, p. 14) only says it was paid by check on New York banks. How the New York banks paid the checks does not appear. But as Col. Tracey had refused treasury notes because they were depreciated, it is not probable that he received depreciated bank paper.

*The fifth item of claim is for interest on moneys borrowed from banks.*

There is no evidence to prove that he paid any interest. The certificates of Thatcher and Perkins are not evidence; nor, if they were, do they prove anything. They are opinions of persons upon facts not disclosed. He was warned of both these objections in 1830, (Record, p. 25,) and replied that he thought the certificates ought to be taken, (Record, p. 29,) but offered no further evidence on the point.

It is well known that so long as public officers were allowed to deposit money with banks their accounts were eagerly sought after, and if the bank ever kept an interest account with Col. Tracey, he must have drawn interest on balances in his favor, as well as paid interest on balances against him.

In another place, below, the petition claims interest on all balances due from the United States to Col. Tracey. That claim necessarily includes this.

*The sixth item of claim is for interest on balances due Col. Tracey on the settlement of his quarterly accounts.*

Col. Tracey disbursed during a period of three years, comprising 12 quarters, and must have rendered 12 quarterly accounts. On four of these accounts the balance was in his favor, viz: September 30, 1814, December 31, 1814, March 31, 1815, and June 30, 1815. On

the other eight accounts the balance must have been in favor of the United States. The petitioner charges the United States with interest on the balances in his favor.

The ruling of this court in the cases of Todd and White are conclusive against this claim ; but it is, moreover, peculiarly destitute of merit.

In 1830 the Committee on Claims of the House of Representatives reported on this very item, asserted as a well known fact, and urged as an objection to the claim, that during the war "disbursing and purchasing officers frequently, when out of funds, and the exigency of the service, required, or a favorable opportunity presented, made purchases, took receipts, and gave due bills, to be paid when in funds. In this way they appeared on the face of their accounts to be in advance to the United States, when, in point of fact, it was the sellers of the articles purchased that were so." (Record, p. 25.) Col. Tracey wrote two answers to this report, (Record, pp. 26, 28,) and in neither does he deny this, or say one word in support of the item. In fact he then and there abandoned it.

On the other eight accounts the United States were in advance to Col. Tracey, as he had public money in his hands. If he charges interest, he should allow interest. There is the same ground to suppose that he made interest out of funds in his hands, as there is to suppose that he paid interest on advances.

There is no evidence that these advances were necessary. If he had given due notice of the funds required they would have been remitted to him. At least it is not shown that the government ever requested him to make any advances, or ever failed speedily to comply with his requisitions for funds.

On each quarterly balance interest is charged for three months. There is no evidence that the balance remained undiminished for that length of time. On the contrary, as regards the balance due June 30, 1815, on which interest is charged to September, it appears (Record, pp. 16, 17) that warrants were ready as early as July 8 to pay it in the District of Columbia or Baltimore, but the option was allowed him to receive it in New York ; when he received it does not appear.

These advances were not made at the request of the United States. Col. Tracey was an officer to make purchases and pay out money. It was no part of his duty to furnish funds. If he was authorized to make purchases beyond the amount of money advanced to him, i. e. to contract a debt, that debt would not bear interest, and Col. Tracey, by assuming and paying it, cannot be in a better condition than the original creditor.

*The seventh item of claim is for balance due of compensation as deputy commissary.*

This claim was not made by Col. Tracey, nor is it presented in the petition.

As stated above, the compensation of a deputy commissary was a commission of  $2\frac{1}{2}$  per cent. on disbursements not to exceed \$2,000 per annum. The commissions allowed from July 1, 1814, to June

30, 1815, amounted to \$1,798 12. The brief says that if the whole amount of disbursements be considered, the commissions would exceed \$2,000. How this conclusion is arrived at does not appear. The record does not show or afford the means of computing the amount of disbursements during the period in question. What it does show, however, goes to prove that a sufficient allowance has been made. Thus the disbursements for the first half of 1815, i. e. January 1 to June 30, 1815, \$4,635, \$1,576, \$4,372, \$661, \$604, \$170, (Record, pp. 8, 9,) amounted to \$12,000, on which the commission would be \$300. Then the amount allowed for the last half of 1814 must have been (\$1,798, less \$300) \$1,498. This shows that the accounting officers did not apply the restriction to any part of the year, and the presumption is, that if commissions for the whole year had amounted to \$2,000, the whole would have been allowed.

*An eighth item of claim is for pay as an issuing commissary.*

This claim is mentioned in the petition, but not referred to in the brief. The length of service is not stated nor the rate of pay, nor is the evidence referred to by which the claim may be supposed to be sustained.

The office of issuing commissary referred to is probably that established by an act of March 13, 1813, sec. 9, (2 Stat., 817.) The duties are defined in the same section, and the pay is fixed by reference to sec. 2 of the act of March 28, 1812. The evidence of service is probably the certificate of W. Lee, Second Auditor, dated February 12, 1828. (Record, p. 14.)

This certificate proves nothing. If it was Col. Tracey's duty, as deputy commissary, to purchase ordnance, clothing, &c., it was his duty in the same capacity, under the 3d section of the act of March 13, 1813, to make the returns mentioned in the Auditor's certificate.

Moreover, the Secretary of War, by the act of March 13, 1813, sec. 5, was specially authorized to prescribe the duties of officers of the commissary department; and in an order, apparently of May 1, and certainly prior to July 9, 1813, is the following paragraph, (Laws and Regulations, p. 90:)

"Deputy purchasing commissaries shall not, unless specially ordered by the commissary general or by the War Department, make any issues of clothing to regiments or parts of regiments."

This is either the limitation of a duty previously existing under the act creating the office, or the imposition of a new duty under the 5th section of the act of March 3, 1813. In either case it shows it was the duty of such commissaries to make issues under proper authority.

JNO. D. McPHERSON,  
*Deputy Solicitor.*



IN THE COURT OF CLAIMS, MAY 30, 1859.

ELISHA TRCEY'S ADMINISTRATOR *vs.* THE UNITED STATES

SCARBURGH, J., delivered the opinion of the court.

The petitioner, in substance, states the following case in his petition :

1. Prior to the last war with Great Britain the petitioner's intestate was appointed, under the direction of the President of the United States, *an agent for fortifications*.

2. Soon afterwards the petitioner's intestate was directed to perform the duties of the *Quartermaster's department* within the district in which he resided.

3. During the whole period of the war of 1812 he was *an agent of the Ordnance department*.

4. In the year 1812, soon after the declaration of war, he was appointed *purchasing commissary*.

The petitioner avers that his intestate performed the duties of those four offices during the whole period of the war ; but that, with the exception of an allowance of \$1,637 97, made him by the Secretary of War, he received compensation only as purchasing commissary.

5. The petitioner's intestate also, during the same period, performed the duties of *an issuing commissary*.

6. Between the 1st of January and the 27th day of June, A. D. 1813, he advanced his own funds for the use of the United States by borrowing money from the banks at Norwich and New London, on which he paid \$348 25 for interest.

7. He paid interest on a draft from the treasury for \$20,000, which was protested, from September 30, to December 31, A. D. 1814, amounting to \$300.

8. He paid for difference of exchange between treasury notes and other funds received from the United States and specie, the sum of \$3,080.

9. At different periods, shown by his accounts, the petitioner's intestate was in advance to the government, and the interest on his advances, while they continued, amounted to the sum of \$1,604 37.

1. As to the first item :

The petitioner's intestate was appointed agent for fortifications in June, A. D. 1810. (Letter of Secretary of War to chairman of Committee of Claims, dated March 23, A. D. 1830.) He held this appointment and performed its duties till the 15th day of July, A. D. 1812, when he was appointed a deputy commissary of purchases, and was allowed by the Secretary of War a commission of four per centum on the public moneys disbursed by him. (Letter of the accountant of the War Department to the Secretary of War, dated December 16, A. D. 1814.)

There is nothing due the petitioner's intestate on account of this item.

2. As to the second item :

In January, A. D. 1809, the petitioner's intestate was directed to

*perform the duties of the Quartermaster's department.* (Letter of the Secretary of War to the chairman of the Committee of Claims, dated March 23, A. D. 1830.)

By order of the Secretary of War, on the 21st day of December, A. D. 1814, he received an allowance for *extra* services performed by him in the quartermaster's department from July 1, A. D. 1812, to September 30, A. D. 1814, the pay and emoluments of an assistant deputy quartermaster general, amounting to the sum of \$1,637 97. Also, by order of the Secretary of War, in January, A. D. 1816, he received a further allowance, for disbursements out of the line of his duty, the pay and emoluments of an assistant deputy quartermaster general, from July 1, to December 31, A. D. 1815, amounting to the sum of \$307 20. A part of those disbursements were made prior to July, A. D. 1815, and the residue—about two-thirds thereof—thereafter.

On the eleventh of February, A. D. 1828, the petitioner's intestate presented an account, claiming additional allowances as assistant deputy quartermaster general, amounting to the sum of \$1,036 53. The Third Auditor then showed him his former accounts, and explained to him the principles on which the allowances therein stated were made; and on the 12th day of February, A. D. 1828, before the Third Auditor had made his report thereon, he withdrew his account, stating that he was satisfied *that he had no claim to further allowances.*

There is no evidence on file in this case which shows that the allowances made to the petitioner's intestate for the duties performed by him in the quartermaster's department were not adequate and just.

On this item of the petitioner's claim we remark, that it was settled more than forty years ago, and that his intestate in his lifetime, after an investigation made more than thirty years ago, expressed himself satisfied with it. To justify the opening of an account so circumstanced requires evidence entirely clear and satisfactory. But if this were a recent case, there is no evidence which shows either that the decedent rendered services for which he has received no compensation, or that the compensation actually made was not all that he was reasonably entitled to. It does not appear from the evidence that there was any error in this respect.

### 3. As to third item :

In July, A. D. 1811, the petitioner's intestate was instructed to perform the duties of agent of the ordnance department. (Letter of the Secretary of the Treasury to the chairman of the Committee of Claims, dated March 23, A. D. 1830.) What those duties were does not distinctly appear from the evidence. The only service which it is even pretended he ever rendered in that capacity was to make disbursements on account of ordnance during the period extending from July, A. D. 1812, till June 30, A. D. 1815, to the amount of \$48,258 64. The allowance already mentioned of \$1,637 97 was made as compensation for the decedent's services in making disbursements on account of the Ordnance department as well as on account of fortifications, the Quartermaster's department, &c. The remarks made upon the second item of the petitioner's claim, therefore, are ap-

plicable to this item also. It does not appear from the evidence that any injustice was done to the petitioner's intestate in regard to it.

4. As to the fourth item :

Under the seventh section of the act of March 28, A. D. 1812, (2 Stat. at L., p. 697,) the petitioner's intestate, as deputy commissary of purchases, was entitled to calculate his commissions on disbursements made by him during the year commencing with the date of his appointment, and not during the calendar or fiscal year ; and, if the two and one half *per centum* on the disbursements made during the portion of the year when he went out of office did not exceed two thousand dollars, he was entitled to receive the full commission, though it might have exceeded the rate of two thousand dollars a year. (United States *vs.* Dickson, 15 Peters' R., p. 141.) He was paid as follows :

From the 15th day of July, A. D. 1812, to June 30,	
A. D. 1813, at the rate of \$2,000 <i>per annum</i> , his regular commissions during that period exceeded that rate	\$1,926 23
From July 1, A. D. 1813, to June 30, A. D. 1814, at the rate of \$2,000, his regular commissions exceeding that sum.....	2,000 00
In the third and fourth quarters of 1814, and the first and second quarters of 1815, his regular commissions amounting to the sum of.....	1,798 72
	<hr/>
	5,724 95

(See statement No. 1, enclosed in the Third Auditor's report of July 15, A. D. 1858.)

He made no disbursements as deputy commissary of purchases after the 30th day of June, A. D. 1815. The papers on file do not enable us to make a calculation of the actual amount to which he was entitled, but as he received full commissions on *all* the disbursements of the fraction of the year when he went out of office, we do not perceive how it is possible that any injustice could have been done him.

The principle insisted upon by the petitioner that the whole period Mr. Tracey was deputy commissary of purchases is to be considered, and if the two and one-half *per centum* on the gross disbursements during that period exceeded the rate of \$2,000 a year, then that he was entitled to be paid at that rate, is wholly untenable. Each official year constituted a period of calculation, and he was entitled to his commissions on the disbursements of that period to an amount not exceeding two thousand dollars. The settlement with him was made substantially on this principle.

There was no error in regard to the fourth item.

5. As to the fifth item :

The only evidence which seems to bear at all on this point is the certificate of the Second Auditor, dated February 12, A. D. 1828, "that Elisha Tracey, then deputy commissary, made returns to the

late office of the general of military supplies for issues of clothing ordnance supplies, &c., &c., from the 1st of April, A. D., 1813, to the 30th June, A. D. 1815." Neither the returns themselves nor copies of them are on file with the papers in this case. If they were made by Mr. Tracey, as deputy commissary of purchases, then they were probably the returns required of him in that character by the third section of the act approved March 3, A. D. 1813. (2 Stat. at L. p. 816-'17, ch. 48.) The petitioner does not make any claim under this item in his brief, and it is clear that there is no evidence on file in this case by which any such claim could be sustained.

6. The sixth item :

There is no evidence whatever on this point. The unsworn statement of Hor. Perkins and A. Thatcher are wholly inadmissible as evidence in this case. They are inadmissible not only because they are not sustained by the oaths of the persons making them, but because they do not exhibit or profess to exhibit the entire transactions of the decedent with the banks named in them. Moreover, those persons merely had *reason to believe from the nature of the checks* drawn on those banks that the money mentioned in them was expended for the use of the United States. What was the *nature* of those checks? why have they not been produced? why has not the decedent's whole account with each of the banks been offered in evidence? why was no claim for reimbursement made at the War Office?

This item is not sustained by the evidence.

7. As to the seventh item :

This item is wholly unsustained by the evidence.

8. As to the eighth item :

This item is wholly unsustained by the evidence.

9. As to the ninth claim :

If at the end of one quarter the decedent was in advance to the government for disbursements made on the day of settlement, or only a day before, and on the first day of the next quarter, or soon afterwards, he was reimbursed, there would be no just ground for claiming interest. Hence it is clear that, in order to determine the justice of this claim, it is necessary that we should have before us all the accounts of the petitioner. Without them we cannot make a proper investigation of this item. As the case now stands it is obviously unsupported by the evidence.

Our opinion, therefore, is, that the petitioner is not entitled to relief.